

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

ORIGINAL

IN THE MATTER OF QWEST CORPORATION'S  
SECTION 271 APPLICATION AND MOTION  
FOR ALTERNATIVE PROCEDURE TO MANAGE  
THE SECTION 271 PROCESS

Utility Case No. 3269

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Exhibit Volume I

Qwest Track A - Exhibits 1 through 5  
AG Exhibits 1 through 4  
AT & T 1 and 1A

DATE TAKEN: January 22 & 23, 2002  
TAKEN BY: Patricia O'Brien, CSR  
SANTA FE DEPOSITION SERVICE  
110 DELGADO  
SANTA FE, NEW MEXICO 87501  
(505)983-4643

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S SECTION 271  
APPLICATION AND MOTION FOR  
ALTERNATIVE PROCEDURE TO MANAGE  
THE SECTION 271 PROCESS**

**Utility Case No. 3269**

**DIRECT TESTIMONY OF  
JOHN BADAL  
NEW MEXICO STATE VICE PRESIDENT  
QWEST CORPORATION**

**November 16, 2001**

**QWEST TRACK A  
EXHIBIT 1**

1

2   **Q.   PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND CURRENT**  
3   **POSITION.**

4   **A.**   I am John Badal, Vice President and General Manager – New Mexico, for Qwest  
5   Corporation (“Qwest”). My business address is 400 Tijeras, NW, Albuquerque,  
6   NM 87102.

7

8   **Q.   PLEASE DESCRIBE YOUR RESPONSIBILITIES IN YOUR CURRENT**  
9   **POSITION.**

10   **A.**   I am responsible for the development and management of public policy,  
11   regulatory and legislative issues as they relate to the delivery of  
12   telecommunications services within the State of New Mexico, which include the  
13   construction of telecommunications infrastructures, the delivery of  
14   telecommunications services, and the improvement in quality of those services in  
15   New Mexico.

16

17   **Q.   PLEASE DESCRIBE YOUR EDUCATION, QUALIFICATIONS AND**  
18   **EXPERIENCE.**

19   **A.**   I received a Bachelor’s Degree in Latin American Literature from Temple  
20   University, *summa cum laude*, in 1972. In 1974 I received a Master’s Degree in  
21   Latin American Literature and a separate graduate certificate in Latin American  
22   Affairs, both also from Temple. I was awarded a Fulbright Scholarship for  
23   doctoral research in Peru in 1974-75. I began my career in the

1 telecommunications field in 1980 as state manager for Government Relations with  
2 Mountain States Telephone & Telegraph Corporation and advanced to director of  
3 Law & Government Affairs for AT&T for a 4-state region from 1983-1998. In  
4 1998, I joined a public affairs consulting firm, Border States Policy Group,  
5 headquartered in Phoenix, AZ , and became president of the firm in 1999. In  
6 August of 2000 I joined Qwest Corporation in my current position. In my  
7 capacity as public policy manager for past and present telecommunications  
8 companies, and as a private consultant, I have conducted extensive research on  
9 various telecommunications delivery systems and authored several papers on  
10 alternative telecommunications technologies for the provision of high speed  
11 Internet services in rural states. Portions of my papers have been added to the  
12 New Mexico Governor's white paper on telecommunications policy, completed in  
13 1999.

14

15 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN FORMAL PROCEEDINGS**  
16 **BEFORE THIS COMMISSION OR ITS PREDECESSORS?**

17 **A.** Yes, I submitted written testimony, and stood for cross-examination on that  
18 testimony in Utility Case No. 3215, Qwest's Alternative Form of Regulation.

19

20 **Q. DID YOU ALSO FILE AN AFFIDAVIT IN THIS CASE ON OCTOBER 5,**  
21 **2001?**

22 **A.** Yes. I filed an Affidavit that documented certain updated and additional  
23 information that I obtained regarding the extent to which local exchange service is

provided to residential customers in New Mexico by carriers competing with Qwest. That Affidavit, which I incorporate in my testimony, is attached as Exhibit JWB - 1.

**Q. DO YOU HAVE UPDATED INFORMATION ON THE SUBSTITUTION OF QWEST'S WIRELINE SERVICE BY THE PCS WIRELESS SERVICE OF CRICKET COMMUNICATIONS SINCE THE FILING OF YOUR AFFIDAVIT?**

**A.** Yes. I have additional information about how Cricket is aggressively positioning its PCS wireless service to consumers as an alternative to traditional landline service. My previously filed Affidavit noted that Cricket is utilizing billboard advertisements, its website, and prime-time television advertising to promote its service as an alternative to conventional landline service. Since that Affidavit was filed, I have received a Cricket direct mailer targeted to consumers with teenage children. Like the television advertisements mentioned above, the mailer enthusiastically promotes the simplicity and attractiveness of Cricket's local services as a strong alternative to landline service:

**Don't get another phone line. Get Cricket!**

<b>Another home phone</b>	<b>Cricket wireless phone</b>
<ul style="list-style-type: none"><li>• Expensive installation charges - Up to \$75</li></ul>	<ul style="list-style-type: none"><li>• No installation charges!</li></ul>
<ul style="list-style-type: none"><li>• Wait around for the installer. Will they show up?</li></ul>	<ul style="list-style-type: none"><li>• Pick up your new phone at your convenience!</li></ul>
<ul style="list-style-type: none"><li>• High monthly bill</li></ul>	<ul style="list-style-type: none"><li>• One low price - \$29.95 for all local calls</li></ul>
<ul style="list-style-type: none"><li>• Unpredictable charges</li></ul>	<ul style="list-style-type: none"><li>• You pay the same low price every month</li></ul>

• Hard-wired to the house

• Take Cricket with you all around town!

1

2

3 See Exhibit JWB-2 for a complete copy of the direct mailer.

4

5 **Q. DO YOU HAVE PERSONAL KNOWLEDGE THAT SOME**  
6 **RESIDENTIAL CONSUMERS ARE, IN FACT, SUBSTITUTING**  
7 **CRICKET'S PCS WIRELESS SERVICE FOR QWEST'S TRADITIONAL**  
8 **LANDLINE SERVICE ?**

9 **A.** Yes. I have had conversations with a number of consumers who have opted for  
10 Cricket PCS wireless service in place of their previous Qwest wireline service or  
11 in lieu of obtaining a second telephone line. I have found that numerous factors  
12 might lead consumers to make such a decision. For example, the Cricket direct  
13 mailer discussed above targets parents who may wish to disconnect their  
14 teenager's second line and replace it with a Cricket phone to more easily keep in  
15 contact with the teenager. In other cases, there may be multiple parties living in a  
16 single home, each of whom needs his or her own telephone line; Cricket offers  
17 such consumers the advantages of individual billing, privacy, and mobility. Still  
18 other consumers may simply like the concept of having access to their phone at all  
19 times, whether they are at home or at the grocery store. Attached as Exhibit  
20 JWB-3 are the Affidavits of several consumers who have opted for Cricket PCS  
21 wireless service *in place* of Qwest wireline service.

22 **Q. WHAT DO YOU CONCLUDE?**

1     **A.**     The evidence presented to the Commission in my Affidavit filed October 5, 2001  
2             and as updated in this testimony today, demonstrates that Cricket is actively  
3             marketing its wireless PCS service as a substitute for traditional wireline  
4             telephone service, and that a number of customers in New Mexico are buying  
5             Cricket's service to replace their telephone lines or in lieu of getting a second line.  
6             As a result, Cricket is directly competing with Qwest in the residential telephone  
7             service market in New Mexico. This evidence, coupled with evidence provided  
8             by Mr. Teitzel in this proceeding, shows that consumers in New Mexico have  
9             access to competitive alternatives for residential telephone services. I respectfully  
10            request the Commission to find that local exchange competition for the residential  
11            customer is in existence in New Mexico, and therefore, that Qwest has fully  
12            satisfied Track A requirements in this state.

13

14    **Q.     DOES THIS CONCLUDE YOUR TESTIMONY?**

15    **A.**     Yes.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

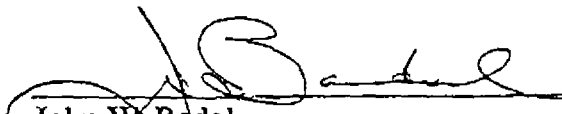
IN THE MATTER OF QWEST )  
CORPORATION'S SECTION 271 )  
APPLICATION AND MOTION FOR ) UTILITY CASE NO. 3269  
ALTERNATIVE PROCEDURE TO )  
MANAGE THE SECTION 271 PROCESS )

AFFIDAVIT OF JOHN W. BADAL

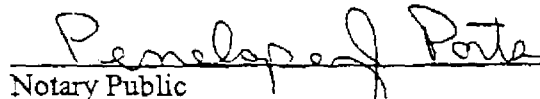
STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF BERNALILLO )

I, John W. Badal, being first duly sworn, depose and state that I am the individual whose prepared Qwest Corporation "Track A" Direct Testimony accompanies this Affidavit, and that said "Track A" Direct Testimony is true and correct to the best of my knowledge and belief, and, further, that these statements are true and accurate answers to the questions contained therein, and that I adopt those as my sworn testimony in this proceeding.

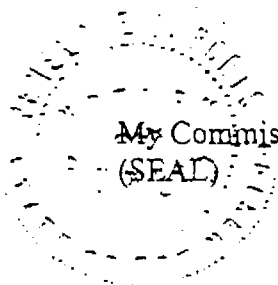
Date: November 15, 2001

  
John W. Badal

SUBSCRIBED AND SWORN TO before me this 15th day of November, 2001.

  
Notary Public

My Commission Expires: 1-23-2003  
(SEAL)





BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF QWEST  
CORPORATION'S SECTION 271  
APPLICATION AND MOTION FOR  
ALTERNATIVE PROCEDURE TO  
MANAGE THE SECTION 271 PROCESS

Utility Case No. 3269

AFFIDAVIT OF JOHN W. BADAL

STATE OF NEW MEXICO     )  
  ) ss.  
COUNTY OF SANTA FE     )

I, John W. Badal, being first duly sworn, depose and state that:

1. I am John W. Badal. My business address is 400 Tijeras Ave. N.W., Albuquerque, NM 87102. I am employed by Qwest Corporation as Vice President - New Mexico.

2. I am submitting this affidavit in order to document certain updated and additional information that I have obtained regarding the extent to which local exchange service is provided to residential customers in New Mexico by carriers competing with Qwest. Testimony concerning this subject was heard in the multistate 271 workshop proceedings in June 2001. To the best of my knowledge, information and belief, the information I am submitting in this affidavit was not available at the time of those proceedings regarding the extent of competition in the New Mexico local exchange residential market.

3. Under the terms of the Telecommunications Act of 1996 (the Act), Competitive Local Exchange Carriers (CLECs) may use any of three means to

compete with Qwest in the local exchange market: resale of Qwest's services, use of Unbundled Network Elements (UNEs) and provision of service via CLEC-owned facilities. The FCC has classified CLECs providing services either via UNEs or via CLEC-owned facilities as facilities-based providers.<sup>1</sup> CLECs are continuing to utilize all three means of serving local exchange customers in New Mexico. Additionally, wireless providers have recently begun to offer attractive, flat-rated pricing options in New Mexico positioned as alternatives to traditional landline services. It is noteworthy that Qwest's residential access line base has decreased from 607,907 in December 2000, as reflected in the direct testimony of Mr. David L. Teitzel filed March 30, 2001, to 604,898 as of July 31, 2001 (the most current tracking data available). Standard indicators, such as new housing permits, suggest that the number of residences in New Mexico has continued to grow. For example, the average number of residential housing permits issued for the Albuquerque/Rio Rancho area from September 1999 to August 2000 was 327, while average number of permits issued for this area from September 2000 to August 2001 was 399, an increase of 22%.<sup>2</sup> While Qwest does not have current statewide information regarding housing permits, we do have that information for two counties: Bernalillo and Doña Ana. In

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<sup>1</sup> See Memorandum and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended To Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543, 20577-99, ¶¶94-101 (1997) ("Ameritech Michigan Order").

Bernalillo County, single family housing starts were up 9.2% through August 2001, while housing starts in Doña Ana County were up 4.9% over the same period.<sup>2</sup> The decline in Qwest's residential access line base indicates that *and wireless carriers* CLECs are providing service to residential customers and some of Qwest's residential customers are opting for alternative services in New Mexico. In the following sections, I discuss updated and new information focusing on the extent to which telephony providers are utilizing these means to provide alternative local exchange services to residential customers.

4. Facilities-based CLECs are required to provide current information regarding residential and business access lines they serve to the E911 database administrator. Both Verizon and SBC manage their own E911 databases, have direct access to this information, and have reported this data in state and FCC filings requesting Section 271 relief. This information has been viewed by the FCC and state agencies as credible evidence of the presence of facilities-based competition in the residential and business markets. Qwest does not manage its E911 database internally, and instead contracts with an outside agency, Intrado, to manage this information. At the time of the filing of Mr. Teitzel's direct and rebuttal testimony, March 30, 2001 and May 23, 2001 respectively,

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<sup>2</sup> Source: "The Albuquerque New Housing Market Letter," a Monthly Publication of Datatrac, September 2001.

<sup>3</sup> [www.census.gov/ftp/pub/const/www/permitsindex](http://www.census.gov/ftp/pub/const/www/permitsindex)

JB

E911 information was available only at an aggregated level, and residential and business breakdowns were not available. However, Intrado produced a report for Qwest on September 28, 2001 displaying E911 record information in separate residential and business categories. As of that date, the New Mexico E911 facilities-based wireline CLEC telephone number "in service" counts, as self-reported by the CLECs, were:

<u>Residence</u>	<u>Business</u>
4,796	19,144

It is important to note that these quantities include no resold lines and no UNE-P lines, both of which are reported and tracked separately. Additionally, this E911 data does not include any wireless numbers, only wireline CLEC data. Instead, this information only reflects CLEC access line records associated with local exchange services provided on a facilities-basis (via stand-alone unbundled loops or CLEC-owned facilities). These E911 numbers are not estimates made by Qwest. They are CLEC-reported numbers.

5. A total of 36 CLECs currently have tariffs on file with the New Mexico Public Regulation Commission (NMPRC) to provide local exchange service to residential customers. Attachment A to this affidavit displays the name of each CLEC for which Qwest has obtained current tariff information, the tariff rate listed for the flat residential local exchange service offered by the

CLEC and any applicable notes clarifying the listed tariff rate. If the listed residential flat rates vary by rate group, only the highest rate (typically Rate Group 4) is shown on this attachment. Clearly, the CLECs shown on the attachment are targeting the residential local exchange market in different ways. For example, NOW Communications, MaxTel and LTS New Mexico appear to be targeting residential local exchange customers with high credit risk by providing prepaid services at relatively high recurring rates. In contrast, Genesis Communications offers only measured residential service (flat-rated service is not offered) at a low price to customers with low outbound telephone usage characteristics. The remainder of the CLECs shown on this attachment show price points for flat residential service falling generally between these ranges. This information shows that there is currently a significant number of CLECs who have received tariff approval by the NMPRC to provide local exchange service to residential customers and are now positioned to serve that market.

6. While a number of wireless providers are now marketing services in New Mexico, Cricket Communications (Cricket) has recently entered the market and is aggressively positioning its PCS wireless service to consumers as an alternative to traditional landline service. It is important to note that, in its second Louisiana order in CC Docket No. 98-121, the FCC stated "we conclude that the broadband PCS service offered by the PCS providers at issue in this

application, which provides two-way mobile voice service, qualifies as telephone exchange service for purposes of Track A.”<sup>4</sup> Regarding PCS services as a substitute for landline services, the FCC stated in the same order “evidence of marketing efforts by broadband PCS providers designed to induce such replacement are also relevant.”<sup>5</sup> Cricket’s New Mexico services qualify on both counts.

7. As stated on its web site,<sup>6</sup> Cricket currently offers flat-rated wireless local calling service “in Chattanooga, Nashville, Knoxville, Memphis, Tulsa, Greensboro, Charlotte, Little Rock, Wasatch Front, Tucson, Spokane, Pueblo, Hickory, Macon, Pittsburgh, Fort Smith, Albuquerque, Santa Fe and Wichita.” (emphasis added). As shown in Attachment B, obtained from the Cricket web site, the Cricket local service is now offered at a flat rate of \$29.95 per month in Albuquerque and Santa Fe. For this price, the customer can make unlimited calls within the local Cricket calling area. As shown on Attachment C, incoming calls from anywhere in the world are included at no additional charge in the flat monthly rate for the service. Long distance calls are attractively priced at a \$0.08 per minute.

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<sup>4</sup> Memorandum Opinion and Order, *Application of Bell South Corporation, et al, for Provision of in-Region, Interlata Services in Louisiana*, 13 FCC Rcd. 20599, 20620, ¶25 (1998).

<sup>5</sup> *Id* at 20624, ¶31.

<sup>6</sup> [www.cricketcommunications.com](http://www.cricketcommunications.com)

8. Cricket Communications is a subsidiary of Leap Wireless International, and is based in San Diego, California. In the Leap Wireless Quarterly Report (SEC form 10-Q), dated May 15, 2001, the company stated that "our innovative Cricket strategy is designed to extend the benefits of mobility to the mass market by offering wireless service that is simple to understand and use, and priced competitively with traditional landline service." (Attachment D). Leap Wireless is clearly pursuing a strategy around encouraging customers to substitute their wireless product for traditional wireline services, and recently stated:

In the spirit of the 1996 Telecom Act, Leap has created competition with both the incumbent local exchange carriers (ILECs) as well as the existing wireless carriers. Leap is committed to providing its customers with service that resembles wireline telephony in everything - except its immobility.<sup>7</sup>

9. In a February 22, 2001 article by Carolyn Appelman of the Albuquerque Journal, John Clark, Cricket's New Mexico general manager stated that Cricket's "...affordable service is great for parents who are thinking of adding a second line for the kids. Except it comes with the added advantage of mom and dad being able to keep track of them. One thing we are noticing is

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<sup>7</sup> Leap Wireless International, Inc. Petition for Partial Waiver of E911 Phase II Implementation Milestones, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, at 4 (filed August 23, 2001).

over 7 percent of our customers are cutting their home phone services.” (Attachment E). This article also highlighted that popular features such as voice mail, Caller I.D. and call waiting can be added to the Cricket service for \$3.95 per month for the first feature and \$2.00 for each additional feature. A package consisting of all three features is priced at \$7.95 per month. In another Albuquerque Journal article, entitled “The Freedom Phone” and dated September 10, 2001, two New Mexico residents are cited as being examples of the type of customers who are actually substituting wireless service for traditional landline services (Attachment F). The first, Penelope Cisneros, stated “In terms of convenience, it’s a lot better. I don’t think I’d ever go back to having just a land line.” The second, Gail Hilliard of Albuquerque reported that she gave up her land line for a wireless phone “because she is constantly on the road,” and her wireless phone means “your home phone is wherever you are.” Clearly, a segment of the population views wireless service to be a viable alternative to traditional landline service.

10. In the its Sixth Annual Report on the State of Competition in the Wireless Industry,<sup>8</sup> released July 17, 2001, the FCC examined the extent to which wireless phones are competing with traditional landline service. At page

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<sup>8</sup> Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (6<sup>th</sup> Annual CMRS Report), FCC 01-192.



32, the FCC stated "according to a recent study by the Yankee Group, about 3 percent of mobile telephony users rely on their wireless phone as their only phone." (Attachment G). Further, at page 33, the FCC cited a study conducted by IDC concluding that "12 percent of respondents said they purchased a wireless phone instead of installing an additional wireline phone." (Attachment H). The referenced IDC study, which was conducted in December 2000 and is attached in its entirety as Attachment I, specifically addresses the Cricket wireless service at page 4, and concludes "over 60% of its subscribers report using their wireless phones as their primary phones, and 7% reported cutting their landline completely."

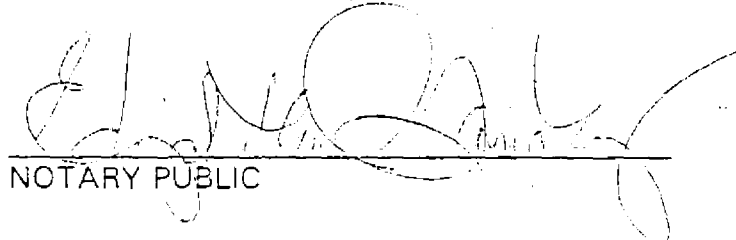
11. Cricket is actively marketing its services in Albuquerque and Santa Fe via billboard ads, its web site, and prime time television advertising. Attachment J is a written transcript of two television ads appearing on Channel 7, KOAT, in Albuquerque on September 26, 2001 between 5:00 and 7:00 p.m. Both ads clearly are targeted to New Mexico residential consumers and feature the simplicity and attractiveness of Cricket's local services as a strong alternative to landline service. Qwest has in its possession a video tape copy of both ads, and is willing to provide a copy to interested parties upon request to Qwest counsel.

12. At the time Qwest's direct testimony was filed in the Multistate docket in March 2001, and at the time of the Track A/Public Interest workshops in June, Cricket's presence as a viable alternative to Qwest's residential local exchange service was in its very early stages, and Qwest had virtually no information in its possession regarding this competitor. However, the evidence provided in this affidavit clearly shows that Cricket is now actively marketing its services in New Mexico as a direct, facilities-based substitute to Qwest's residential local exchange services.

Date: October 5, 2001

  
JOHN W. BADAL

SUBSCRIBED AND SWORN to before me this 5<sup>th</sup> day of October, 2001.

  
NOTARY PUBLIC

My Commission Expires:

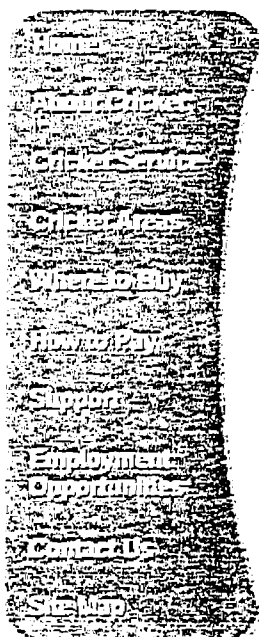
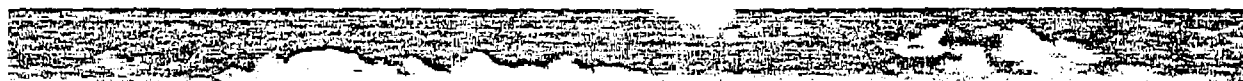
11/22/03

ACTIVE CLEC RESIDENTIAL LOCAL EXCHANGE TARIFFSIN NEW MEXICO

<u>CLEC</u>	<u>FLAT RESIDENTIAL RECURRING RATE</u>	<u>NOTES</u>
NOW Communications	\$49.00	Prepaid service
MaxTel Communications	\$49.99	
Maxcess Inc	\$16.16	Rate Class 4
LTS New Mexico	\$49.95	
IVIT Communications	15% discount from Qwest rates	Resale
IP Voice Communications	\$16.16	Rate Class 4, billed One month in advance
Ionex Communications	\$13.75	
Western Interactive	\$30.80	Billed one month in advance
Integra Telecom	\$19.00	"Metro" rate
HJN Telecom	\$16.16	Rate Class 4
Global Telelink	\$16.16	Rate Class 4
Genesis Communications	\$4.92 + usage	Measured only
ServiSense	\$20.66	Rate Group 4
NTS Communications	\$8.50	Statewide rate
Reconex	\$44.99	Resale
Emergent Communications	\$10.66	Statewide rate
DPI Teleconnect	\$53.50	Resale
DMJ Communications	\$49.00	Resale
CommSouth	\$41.99	Resale
ReaNet	\$9.90	Statewide rate
PVT Networks	\$19.95	Statewide rate
Premiere Network Services	\$10.66	Rate Groups 2,3,4
Choctaw Communications	\$49.00	Statewide rate
CCNM Inc	\$44.00	Statewide rate
Brooks Fiber	\$25.51	"Large Metropolitan" Rate
American Fiber Network	\$15.00	Statewide rate
Alltel	\$31.00	Statewide rate
Advanced Telecom	\$16.16	Rate Group 4
360 Networks USA	\$16.16	Rate Class 4

Z-Tel Communications	\$59.99	Incl. 5 features and 200 minutes Toll
Yucca Communications	\$18.00	Portales only
Tularosa Communications	\$24.00	Alamogordo only
Telicor	\$16.16	Rate Group 4
Universal Access	\$16.16	Rate Group 4
Telera Communications	\$16.16	Rate Group 4, billed one month in advance
ServiSense	\$20.66	Rate Group 4

TOTAL: 36



## Albuquerque and Santa Fe Areas

# cricket™

All Your  
Local Calls

**\$29.95**  
a month  
plus tax

Select the Albuquerque or Santa Fe Service Areas for \$29.95 a month, plus tax or make calls in both Service Areas for an additional \$10 a month plus tax.

- Coverage Maps
- Where to Buy Cricket in Albuquerque and Santa Fe
- Where to Pay Cricket in Albuquerque and Santa Fe

### Calling Long Distance

Call anywhere in the United States from anywhere in the Cricket Service Area.

Just dial like you do from your home phone: 1 + (area code) + phone number.

Cricket Long Distance is comfortable and affordable, and could cost you less than calling from your home phone. That's because there are no surprises or hidden charges:

- One low cost per minute (8 cents)
- No monthly service charge
- No minimum usage charge
- No taxes added on
- No monthly bill
- Minutes don't expire as long as you remain a Cricket customer



### Calling Directory Assistance

Call for phone number information from anywhere in the Cricket Service Area.

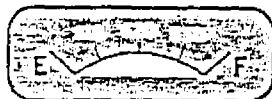
Just dial like you do from your home phone: 411.

The operator will give you the local phone number.

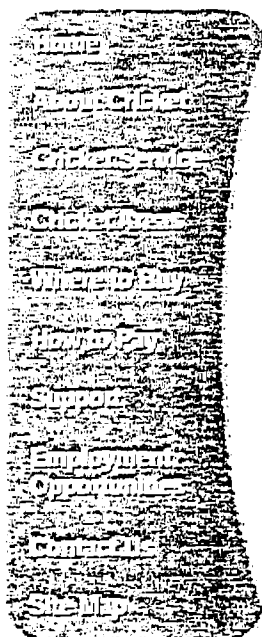
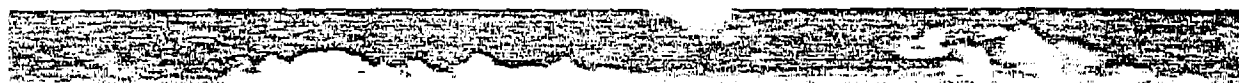
Cricket Directory Assistance is comfortable and affordable:

- Only 50 cents per call

### Refilling



You put money in your Cricket phone "gas tank" and then use it to pay for your long distance calls (just 8 cents a minute) and directory assistance calls (just 50 cents a call). You'll hear a message when it's time to refill. You can add \$10 or more to your tank at any time. You can also add more money to your gas tank by paying an extra amount on your regular Cricket bill each month.



## Support - Frequently Asked Questions

cricket™

The following are our more frequently asked questions:

- [Where can I use my Cricket phone?](#)
- [What if I am outside the Cricket service area?](#)
- [Do I pay for incoming calls?](#)
- [Can I purchase other features or services for my phone?](#)
- [Can I make long distance and 411 directory assistance calls?](#)
- [How do I make a long distance call? What do I dial?](#)
- [Where can I call using Cricket's long distance service?](#)
- [How do I pay for my service each month?](#)
- [Where can I purchase more phones?](#)
- [Can I choose my telephone number?](#)
- [Is Cricket service analog or digital?](#)
- [I have a phone from another wireless provider; can I use it?](#)
- [Can I order my service by the phone or from this web site?](#)
- [Can I order my service over the web?](#)
- [Does Cricket sell phone accessories?](#)
- [Can I purchase a handset or accessories over the phone or web?](#)
- [Can I download ringer tones from the internet to my Cricket phone?](#)
- [How do I retrieve my voice mail messages in my voice mail box?](#)
- [Does the envelope button on the Cricket phone show me I have voice mail messages?](#)
- [Can I change my Cricket telephone number?](#)

Q: Where can I use my Cricket phone?

A: You can make and receive calls as long as you are in the Cricket Service Area. Cricket has carefully designed the area so that The Around-Town Phone will work where most people live, work and play. Please refer to the [Cricket service map for your city](#) to find out where your Cricket phone will work.

[\[ Back to top \]](#)

Q: What if I am outside the Cricket service area?

A: Cricket service is designed to be used where you live, work and play. It will not work outside of the Cricket service area.

[\[ Back to top \]](#)

Q: Do I pay for incoming calls?

A: With Cricket, all incoming calls from anywhere in the world are included in your monthly service price. There are no additional charges for incoming calls.

[\[ Back to top \]](#)

Q: Can I purchase other features or services for my phone?

A: Yes, additional features include voice mail, call waiting, and caller id. Cricket also offers a Phone Replacement Plan, for protection against theft or accidental loss or damage.

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Q: Can I make long distance and 411 directory assistance calls?

A: Yes, from anywhere in the Cricket service area. Simply dial as you would from your phone: 1 + area code + phone number for long distance calls, or 411 for

expressions in this report. It is based on current information, which we have assessed but which by its nature is dynamic and subject to rapid and even abrupt changes. Our actual results could differ materially from those stated or implied by such forward-looking statements due to risks and uncertainties associated with our business. Factors that could cause actual results to differ include, but are not limited to: changes in the economic conditions of the various markets our subsidiaries serve which could adversely affect the market for wireless services; our ability to access capital markets; a failure to meet the operational, financial or other covenants contained in our credit facilities; our ability to rollout networks in accordance with our plans, including receiving equipment and backhaul and interconnection facilities on schedule from third parties; failure of network systems to perform according to expectations; the effect of competition; the acceptance of our product offering by our target customers; our ability to retain customers; our ability to maintain our cost, market penetration and pricing structure in the face of competition; uncertainties relating to negotiating and executing definitive agreements and the ability to close pending transactions described in this report; technological challenges in developing wireless data services and customer acceptance of such services if developed; our ability to integrate the businesses and technologies we acquire; rulings by courts or the FCC adversely affecting our rights to own and/or operate certain wireless licenses; and other factors detailed in the section entitled "Risk Factors" included elsewhere in this report and in our other SEC filings. The forward-looking statements should be considered in the context of these risk factors. Investors and prospective investors are cautioned not to place undue reliance on such forward-looking statements. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

## OVERVIEW

Leap is a wireless communications carrier that is providing innovative, affordable, simple wireless services designed to accelerate the transformation of wireless service into a mass consumer product. We generally seek to address a much broader population segment than traditional wireless providers have addressed to date. In the U.S., we are offering wireless service under the brand name "Cricket(TM)." Our innovative Cricket strategy is designed to extend the benefits of mobility to the mass market by offering wireless service that is as simple to understand and use as, and priced competitively with, traditional landline service. In each of our markets, we are deploying 100% digital, Code Division Multiple Access, or CDMA, networks that we believe provide higher capacity and more efficient deployment of capital than competing technologies. This, when combined with our efforts to streamline operation and distribution systems, allows us to be a low-cost provider of wireless services in each of our markets.

Cricket service allows customers to make and receive virtually unlimited calls within a local calling area for a low, flat monthly rate compared with traditional wireless services. Cricket customers pay in advance each month's service from a simple, straightforward bill. We offer Cricket service without a term contract, and because service is paid in advance, we currently require no credit check. The simplicity of the Cricket service

allows us to sustain lower operating costs per customer compared to traditional wireless providers. Our networks are designed and built to provide coverage in the local calling area where our target customers live, work and play. As a result, we believe that our network operating costs are less than those of traditional wireless providers.

As of March 31, 2001, we had launched Cricket service in markets covering a total population of approximately 9.2 million and had approximately 339,000 Cricket customers across the U.S. To date we have acquired or have rights to acquire wireless licenses covering approximately 72.6 million potential

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LENGTH: 620 words

HEADLINE: Firm Offers Phone Service for One Price

BYLINE: Carolyn Appelman Journal Staff Writer

BODY:

Cricket Sets Up Shop In Duke City Area

Hear chirping sounds in Belen, Los Lunas or Bosque Farms?

No, it's not spring yet. It's the sound of a new cell phone service provider.

Cricket Communications, Albuquerque's newest wireless phone company, features a coverage area extending into these Valencia County locations.

Cricket, an offspring of Leap Wireless International, offers a no-contract, monthly \$29.99 "all-you-can-talk" phone service.

For those who have not seen any of the company's ads, its logo is a green couch.

"It is a very comfortable service just like the green couch represents," John Clark, general manager of Cricket's New Mexico operation said Tuesday. "The service includes all incoming calls, there are no hooks, no hidden charges, there are no contracts or credit checks."

Clark said the company's target market is the approximately 65 percent of the population who are not using cellular.

But he said the service is great for small businesses and other folks who live, work and travel mainly in the Albuquerque, Belen and Santa Fe metro areas.

Clark said another Cricket bonus is that the affordable service is great for parents who are thinking of adding a second line for the kids.

"Except it comes with the added advantage of mom and dad being able to keep track of them," Clark said, adding that it is up to the kids to answer the phone.

"One thing we are noticing is over 7 percent of our customers are cutting their home phone services," Clark said.

Cricket dealers in the area are: Excel Wireless at 1625 Rio Bravo; Future Communication and Staples in Los Lunas; Al's Auto Parts, Worldlynk and Pronto Faging in Belen; and CDO Payday Loans, Cobra Communications and RJS Sports Center in Bosque Farms.

Web service is not currently available but the company is looking into offering it, Clark said.



"We feel we need to do voice service first," he said.

General service boundaries in the greater Albuquerque metro area are from just south of Belen north to the Santo Domingo Pueblo, and from the mountains west to the populated areas of the mesa.

In the Santa Fe metro area, service will extend south and west as far as the airport area; north to the junction of Cerrillos Road and U.S. 84; and east several miles beyond the Santa Fe Community College.

On Tuesday, getting connected to Cricket was quick and easy, taking less than 10 minutes, from walking in the door phone-less to walking out with phone in hand and service.

Customers can add features such as voice mail, caller ID and call waiting for \$3.95 per month for the first feature and \$2 for each additional service. All three services will cost an additional \$7.95 per month.

Long-distance calls can be made from anywhere within the service area. Cricket customers have what the company calls a "gas tank" for long-distance calls. Customers pay in advance the amount they expect to use. New service includes \$2 worth of long distance at 15 cents a minute.

Customers have to purchase specific all-digital phones made by Nokia or Kyocera that retail for \$99.95 and up, including the first month of service, according to a sales clerk at the Corrales office.

For an extra \$10 per month Cricket customers can have local calling service in both Albuquerque and Santa Fe service areas.

Clark, who moved to Albuquerque from Columbus, Ohio, said business has been very brisk.

"We are very pleased with the reception," he said. "I have found Albuquerque very comfortable."

Cricket's parent company has made Albuquerque its regional headquarters and national network operating center. The headquarters eventually will employ about 170 people.

For more information visit one of the company's outlets or log on to [www.cricketcommunications.com](http://www.cricketcommunications.com).

LOAD-DATE: February 11, 2001

the freedom phone

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The number of homes hooked to land lines declines as America discovers wireless

The picture is the same across the country. Verizon Communications, the nation's largest local phone company, says its number of residential phone lines dropped by 0.5 percent to 39.84 million in the second quarter. Verizon's number of wireless subscribers increased 12.7 percent over the same period.

In fact, it appears the most recent numbers indicate the first decline in land-line sign-ups in 17 years.

A September 2000 study by the Yankee Group, a Boston-based telecommunications research organization, showed 3 percent of wireless users nationwide have no land lines.

Young people sharing accommodations or people who are rarely at home are the group Qwest sees shifting from land line to wireless.

One of those who has gone totally wireless is Albuquerque financial adviser Penelope Cisneros, who gave up her land line in 1992, first getting a pager and later a wireless phone.

"In terms of convenience, it's a lot better. I don't think I'd ever go back to having just a land line," said Cisneros, who says she spends little time at her Placitas home and travels frequently to Denver and



more New Mexico cities over the next five years.

DSL subscribership in Qwest's 14-state region leaped 105 percent from 175,000 in June 2000 to 360,000 in the second quarter of this year.

In the race to provide high-speed Internet access, phone companies are up against stiff competition from cable and satellite TV companies.

Albuquerque's sole cable provider, Comcast, says an average of 5 percent of the city's 120,000 cable subscribers have signed up since it rolled out cable modem service last fall.

Valor Telecommunications, New Mexico's second largest local phone company, is looking at satellite as way to provide high-speed access in the primarily rural communities it connects.

PHOTO BY: ROSE PALMISANO/JOURNAL

PHOTO: Color

IN TOUCH AND ON THE ROAD: Gail Hilliard of G. Hilliard Printing & Courier Services says a cell phone is a must since she has to have direct communication with her customers. And she gets total mobility for the same price.

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Powertel is particularly aggressive in the prepaid market. As of year-end 2000, Powertel reported that 54 percent of its subscriber base was on prepaid pricing.<sup>205</sup> In the fourth quarter of 2000, 83 percent of Powertel's 104,000 new subscribers were prepaid.<sup>206</sup>

#### e. Wireless/Wireline Competition

According to a recent survey by the Yankee Group, about 3 percent of mobile telephone subscribers rely on their wireless phone as their only phone.<sup>207</sup> While most wireless customers may not be willing to "cut the cord" just yet in the sense of canceling their subscription to wireline telephone service, it is indisputable that wireless service has significantly changed the way Americans communicate. Initially a business tool, wireless phones have become a mass-market consumer device. According to one survey, 77 percent of wireless customers said they use their phones primarily for personal calls.<sup>208</sup> For some, wireless service is no longer a complement to wireline service but has become the preferred method of communication. In a survey performed for the Consumer Electronics Association, three in 10 wireless phone users stated they would rather give up their home telephone than their wireless phone.<sup>209</sup> Among wireless users aged 18 to 34 years old, that figure rose to 45 percent.

In some areas, wireless use has begun to erode wireline revenue due to "technology substitution," that is, the substitution of new technologies for existing ones.<sup>210</sup> BellSouth, for example, stated in February 2001 that it was exiting the payphone business in part due to business lost to wireless phones.<sup>211</sup> Twenty million

<sup>205</sup> Powertel, Inc. *Announces Preliminary Fourth Quarter 2000 Financial Results*, News Release, Powertel, Feb. 1, 2001.

<sup>206</sup> *Id.*

<sup>207</sup> Judy Saries, *Wireless Users Hanging Up On Landline Phones*, NASHVILLE BUSINESS JOURNAL, Feb. 2, 2001. CTIA estimates that number could be as high as 5 percent, based on a February 2000 survey it sponsored. *Consumers Replacing Landline Phones with Wireless*, KNIGHT RIDDER TRIBUNE BUSINESS NEWS, Jan. 10, 2001, available in 2001 WL 2837499.

<sup>208</sup> *Majority of Customers Use Cell Phones for Personal Calls*, RCR WIRELESS NEWS, Jan. 29, 2001, at 29 (citing a survey conducted by Cellular One Group).

<sup>209</sup> *Will Wireless Phones Make Traditional Home Telephones Obsolete?*, News Release, Consumer Electronics Association, Apr. 6, 2000.

<sup>210</sup> Andrew Backover, *AT&T Loss Reflects Long-Distance Shift Consumers Turn To Calling Cards*, *Wireless*, USA TODAY, Jan. 30, 2001, at B3. A similar term, "landline displacement," refers more specifically to the substitution of mobile phones for wireline phones. Deborah Mendez-Wilson, *Wireless Takes a Bite of Pay-phone Biz*, WIRELESSWEEK, Feb. 12, 2001, at 5.

<sup>211</sup> *BellSouth Announces Plans For Public Communications Unit*, News Release, BellSouth, Feb. 2, 2001. According to Charlie Coe, President of BellSouth Network Services, "BellSouth has carefully evaluated the market trends in the payphone business which indicate that our customers are opting for the new technology options we provide, including wireless telephones and interactive pagers." Industry insiders expect the payphone business to continue to shrink as wireless penetration increases. Deborah Mendez-Wilson, *Wireless Takes a Bite of Pay-phone Biz*, WIRELESSWEEK, Feb. 12, 2001, at 5.

mobile telephone customers have service plans that do not charge extra for long distance.<sup>212</sup> and at least one analyst believes that such plans are reducing wireline long distance minutes and revenues.<sup>213</sup> Another analyst estimates that 20 percent of all outbound wireless voice minutes are used for long distance.<sup>214</sup> AT&T blamed its fourth quarter 2000 \$1.7 billion loss in part on customers abandoning wireline long distance calls for wireless phones, e-mail and prepaid calling cards.<sup>215</sup> In one survey conducted in January 2000, 12 percent of respondents said they purchased a wireless phone instead of installing an additional wireline phone.<sup>216</sup>

A few wireless carriers have begun offering service plans designed to compete directly with wireline local telephone service.<sup>217</sup> For example, Leap, through its Cricket subsidiary, now offers its Comfortable Wireless mobile telephone service in 12 markets, predominately in the South and Southwest.<sup>218</sup> At the end of 2000, Leap had more than 190,000 customers, up nearly nine-fold from the 22,000 customers reported at the beginning of the year.<sup>219</sup> Leap's service allows subscribers to make unlimited local calls and receive calls from anywhere in the world for one flat rate of \$30 per month.<sup>220</sup> Roaming outside the local area is not available,<sup>221</sup> and customers pay extra for long distance calls.<sup>222</sup> According to Leap, about half of its customers view their phones as replacements for first or second lines,<sup>223</sup> and about 7 percent of its

<sup>212</sup> Andrew Backover, *AT&T Loss Reflects Long-Distance Shift Consumers Turn To Calling Cards*, *Wireless*, USA TODAY, Jan. 30, 2001, at B3.

<sup>213</sup> *Id.* (citing analyst Peter Friedland at W.R. Hambrecht).

<sup>214</sup> Michael Rollins, *et al.*, *Wireless by the Minute*, Equity Research, Salomon Smith Barney, Jan. 8, 2001, at 8. Sprint PCS markets its nationwide digital wireless network as a long-distance alternative. Andrew Backover, *AT&T Loss Reflects Long-Distance Shift Consumers Turn To Calling Cards*, *Wireless*, USA TODAY, Jan. 30, 2001, at B3.

<sup>215</sup> Andrew Backover, *AT&T Loss Reflects Long-Distance Shift Consumers Turn To Calling Cards*, *Wireless*, USA TODAY, Jan. 30, 2001, at B3.

<sup>216</sup> Callie Nelson, *Replacing Landline with Wireless: How Far Can It Go?*, IDC, Dec. 2000 (citing IDC's *Personal Wireless Communications User Survey*, 2000).

<sup>217</sup> One analyst argues that recent price reductions give wireless price parity with wireline, at least at pricing around \$130 per month. See Daniel J. Berninger, *Telephony Unplugged: Wireless Achieves Price Parity with Wireline* (visited Mar. 8, 2001) <<http://slides.pulver.com/slides/login.asp>>.

<sup>218</sup> Leap, *Cricket* (visited Mar. 9, 2001) <<http://www.leapwireless.com/bcindex.html>>. Chattanooga, Nashville, Knoxville, and Memphis, TN; Charlotte and Greensboro, NC; Tulsa, OK; Tucson, AZ; Wichita, KS; Little Rock, AR; Albuquerque and Santa Fe, NM; and Salt Lake City, UT. Leap, *Cricket Service Areas* (visited Mar. 8, 2001) <<http://www.cricketcommunications.com/areas.asp>>. See also *Fifth Report*, at 17673.

<sup>219</sup> *Leap Reports Results for Fourth Quarter of Fiscal 2000*, News Release, Leap, Feb. 14, 2001.

<sup>220</sup> The monthly fee varies slightly by service area.

<sup>221</sup> Roaming is not available even in other Leap markets. Leap, *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, *Comments*, WT Docket No. 00-193, at 6.

<sup>222</sup> Leap, *Operating Companies* (visited Mar. 8, 2001) <<http://www.leapwireless.com/site/index.html>>.

<sup>223</sup> S. Flannery, *Telecom - Wireline: What Are The Competitors Up To?*, Industry Report, Morgan Stanley, Dean Witter, Feb. 14, 2001, at 2 (citing Harvey White, Chairman and CEO of Leap Wireless International, Inc.).



# Replacing Landline with Wireless: How Far Can It Go?

Callie Neisen

IDC Bulletin #23429 - December 2000

## Table of Contents - Abstract - Document

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### IDC Opinion

*How much traffic is moving from landline to wireless?*

*Although this is a hard question to answer, one can look at the growth in minutes of use (MOUs) of both landline and wireless and see that some traffic is definitely moving to wireless. In addition, from end-user reports, we know that wireless is stealing some traffic from landline. In fact, in a survey of 900 households that have wireless phone users, 56.4% reported using their wireless phones at home and 26.2% reported using their wireless phones at work. Just over 12% of households also reported making their most recent wireless phone purchases instead of installing additional landlines.*

### Overview

By 2004, approximately 92% of wireless users will be using their wireless phones when they could be using wired ones. They are using their wireless phones as their primary phones, have purchased wireless phones instead of additional landlines, or are simply transferring some of their minutes of use (MOUs) from landline to wireless.

This bulletin presents survey data that shows end-user trends in landline replacement. Forecasts of MOUs split by wireless versus landline, voice versus data, and business versus consumer are provided. IDC also forecasts the percentage of wireless subscribers who will replace landline with wireless.

### Definitions

- **Minutes of use (MOUs).** This term can describe wireless use, landline use, or total telecom use (both landline and wireless use together).
- **Landline replacers.** This term refers to wireless users who replace wireline use (MOUs) with wireless. There are three types of replacers: those who completely replace landline phones with wireless and use the wireless as their primary phones (called *complete landline replacers*), those who purchase wireless phones instead of additional landline phones, and those who migrate some of their landline MOUs to their wireless phones.

### *Personal Wireless Communications User Survey Findings*

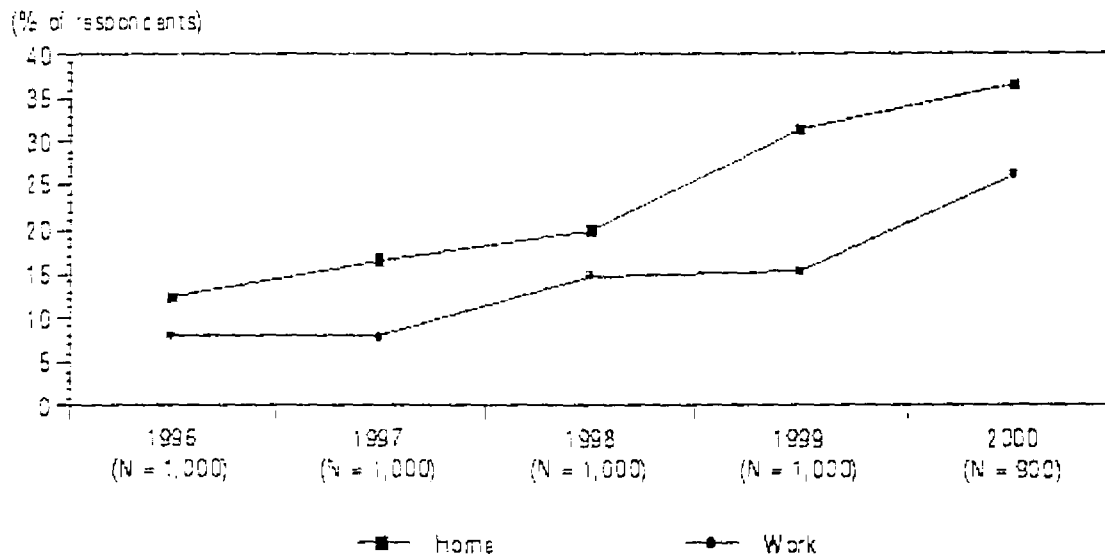
In January 2000, IDC conducted a telephone survey of 900 U.S. households with wireless users. Respondents were asked a number of questions about their current use patterns.

One question asked about the percentage of calls made at home and at work. Figure 1 shows the results of this question from the *Personal Wireless Communications User Survey, 2000* (IDC 220004, April 2000). For purposes of comparison, these percentages are also shown for the 1996 through 1999 surveys.

The percentage of users who use their wireless phones at home has continuously increased since 1996 -- nearly three times over, from 12.4% to 36.4%. The percentage of users who use their wireless phones at work has also increased over three times over since 1996, from 8.0% to 26.2%.

Because the survey was a telephone survey, all the respondents had home phone lines. IDC also assumed that a vast majority, if not all, of the respondents who were employed also had work phones. Therefore, respondents who said that they made at least 1% of their wireless calls either at home or at work were asked what percentage of all their calls at these locations were made on their wireless phones. Over one-third of respondents said that they used their wireless phones at home. These respondents made an average of 18.5% of all their calls made from home on their wireless phones. Over one-quarter of respondents said that they used their wireless phones for over 35.0% of all their calls made at work (see Figure 2). In fact, 14.0% of them made and received 100% of their calls at work on their wireless phones.

Figure 1 - U.S. Respondents Who Make Wireless Calls from Home and Work, 1996-2000

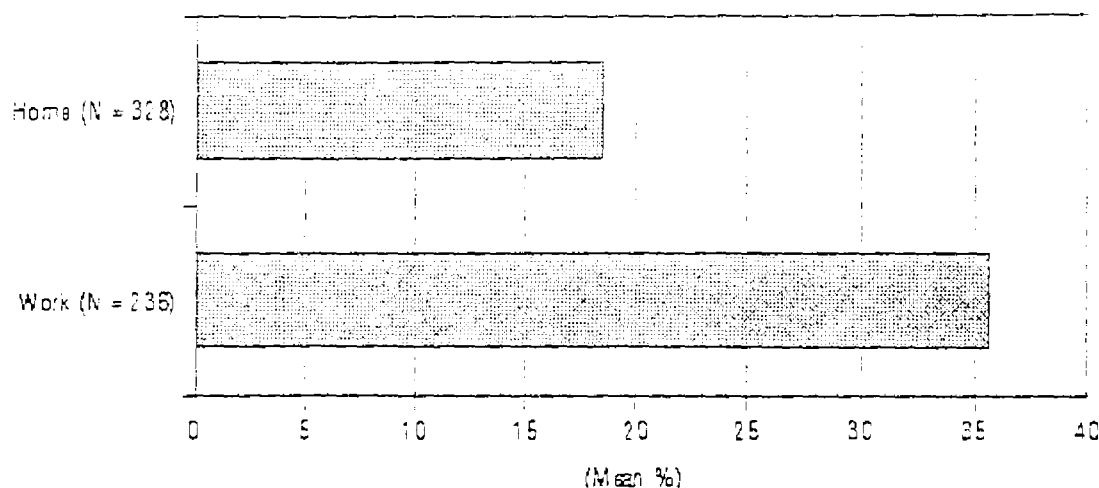


Source: IDC's *Personal Wireless Communications User Survey, 1996-2000*

Figure 2 - U.S. Cellular/PCS Phone Use by Location

Q: What percentage of all the calls you make and receive at home or work during a typical week are on your cellular or personal communications service (PCS) phone?





N = Respondents who reported making 1% or more of wireless calls at home or work.

Source: IDC's *Personal Wireless Communications User Survey*, 2000.

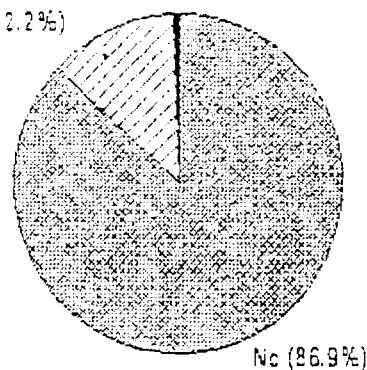
In addition to users who replace some landline MOUs with wireless, there is also the segment of landline replacers who have purchased wireless phones instead of installing additional landlines at home. [Figure 2](#) shows the results of the question about purchasing wireless instead of purchasing an additional landline. Over 12% of respondents had a positive response to this question.

Figure 3 - U.S. Cellular or PCS Phones Purchased to Forego Installing Additional Landlines

Q. Was your most recent cellular or PCS phone purchased instead of installing an additional phone line?

Refused/don't know (0.9%)

YBS (12.2%)

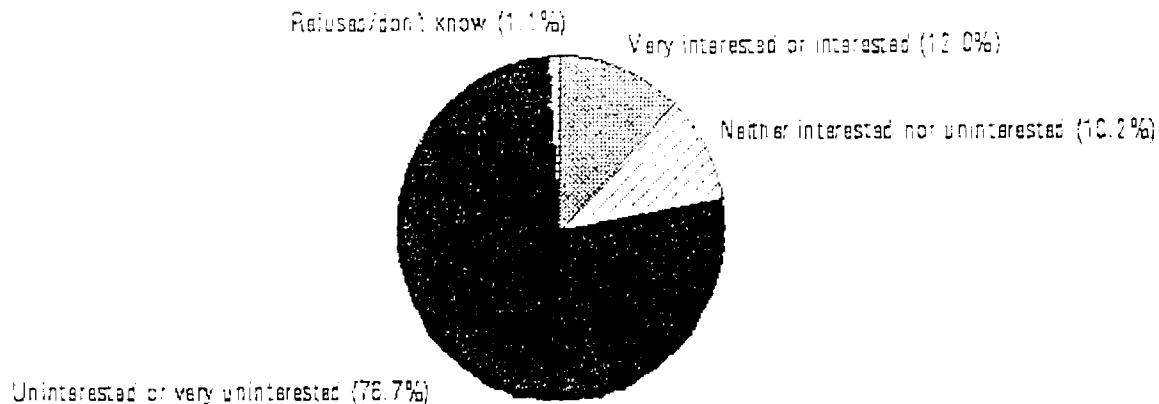

$$N = 900$$

Source: IDC's *Personal Wireless Communications User Survey*, 2000

Figure 4 shows respondents' interest in completely replacing their home phones with wireless handsets. While the majority of respondents were not interested in the idea, nearly 13% of users were either interested or very interested in doing so.

Figure 4 - U.S. Interest in Home Phone-to-Wireless Changeover

Q How interested are you in completely replacing your home phone with wireless phones?



N = 900

Source: IDC's *Personal Wireless Communications User Survey*, 2000

### Leap Wireless: A Case Study

Leap Wireless' U.S. brand, Cricket Communications, has taken a giant step toward promoting landline replacement. It has taken a very different approach to selling wireless service from traditional carriers. Cricket Communications focuses on controlling costs to increase profitability while offering rates competitive to landline rates. To reduce costs, Cricket does not offer roaming capabilities, produces simple bills, does not pay commissions to salespeople, and does not do credit checks on new customers. It offers unlimited local calling for \$29.95 per month. This price is similar to pricing for local landline service. In fact, over 60% of its subscribers report using their wireless phones as their primary phones, and 7% reported cutting their landline completely. Twelve percent of the calls on the network are mobile-to-mobile calls, and 40% are incoming. This lowers the interconnection charges the carrier has to pay for call termination, and the incoming calls result in termination fees paid to Cricket by the local exchange carrier (LEC).

Although it is possible for a large carrier to offer services similar to Cricket's, it is doubtful we will see it happen. Large carriers have a great amount invested in their nationwide networks and have much higher expenses and investments than Cricket. It is possible, however, for a carrier to develop another brand that is not at all associated with its parent company in the consumers' eyes and that offers a service similar to Cricket's without roaming capabilities, credit checks, or commissions to salespeople. If this brand could manage to control costs in the same way as Cricket, it too could develop a base of users who primarily use their wireless phones instead of their wired ones. These customers will not only give out their wireless phone numbers if all incoming calls are included in the base price, but they will also use their wireless phones more, which will likely result in less churn among those subscribers.

### Vox.Link: Addressing Some Issues in Landline Replacement

One of the major issues in total landline replacement is the fact that wireless phone battery life is limited. Let's face it: With a wired phone, you never have to worry about charging it. Another drawback to fully doing away with landline is the fact that you'll have only one handset in your house. That means that if you are in the back bedroom and you are lucky enough to hear your handset ring, you have to hunt down that handset in order to answer the call. (Many of us can relate to this situation when it comes to cordless phones in the house.)

One company, Vox2, has developed a product called Vox.Link that should resolve these two issues. Vox.Link is a small "base station" that turns a wireless handset into a second phone line when the base station is plugged into a wireline connection. Vox.Link connects into the home's telephone wiring so that

when a call comes in, all the phones in the house ring. The ring is distinctive to the handset on which the call came. The base station also acts as a charger, alleviating any worries about keeping the battery charged for all calling needs. IDC expects the device to appeal to people who make and receive wireless calls at home, especially at the product's planned price point of \$150. The company could improve its product by offering a single base station that can handle more than one handset and by offering units supporting a wider variety of handsets.

## Landline Replacement Forecast, 1999-2004

### *Methodology*

To determine the total yearly cellular/PCS MOUs, IDC first calculated the average monthly use per subscriber based on findings from our 1999 and 2000 *Personal Wireless Communications User Surveys*. These telephone surveys of households that were using cellular and/or PCS were conducted at the beginning of 1999 and the beginning of 2000.

According to the surveys, the average monthly household cellular/PCS use was 155 minutes in 1999 and 248 minutes in 2000. Because these usage levels are for households, IDC next considered the average number of cellular/PCS phones per household. In 1999, this number was 1.42; in 2000, this number was 1.55. IDC then calculated the average monthly use per subscriber by dividing the total monthly household use by the number of cellular/PCS phones per household. For 1999 and 2000, this worked out to 109 and 160 minutes per month, or 1,307 and 1,918 minutes per year, respectively.

Next, IDC's cellular/PCS subscriber forecast was used to determine the total cellular/PCS MOUs. According to the forecast, at the end of 1999, there were more than 77 million cellular/PCS subscribers. By the end of 2004, IDC predicts that there will be nearly 144 million cellular/PCS subscribers. The average number of cellular/PCS subscribers in 1999 was then multiplied by the average yearly cellular/PCS use. The result was that more than 93 billion wireless minutes were used in 1999. Similar calculations were done for the 2000-2004 period.

Next, the total landline MOUs were calculated and forecast by IDC's landline research group. Using the total landline and total wireless MOUs, IDC determined the total telecom MOUs. Last, wireless and landline MOUs were calculated as a percentage of total telecom MOUs.

IDC also has consumer, business, voice, and data splits in the forecast. These forecasts were made using the forecasts for the consumer/business and voice/data splits from *U.S. Wireless Services and Devices Market Assessment, 1999-2004* (IDC [22214](#), April 2000).

For more detail on the landline forecasts, see *U.S. Residential Landline Telecommunications Market Assessment and Forecast, 1999-2004* (IDC [22720](#), September 2000).

*Note: All numbers in this bulletin may not be exact due to rounding.*

### *1999-2004 Forecast*

Table 1 shows the average monthly cellular/PCS MOUs per household, the average number of cellular/PCS phones per household, and the average monthly and annual cellular/PCS MOUs per subscriber.

Table 1 - U.S. Cellular/PCS Minutes of Use, 1999-2004

	1999	2000	2001	2002	2003	2004	1999-2004 CAGR (%)
Average monthly cellular/PCS MOUs per household	155	248	396	595	832	1,082	47.6
Average number of cellular/PCS phones per household	1.42	1.55	1.64	1.73	1.85	1.98	6.8
Average monthly cellular/PCS MOUs per subscriber	109	160	242	343	451	548	38.1
Average yearly cellular/PCS MOUs per subscriber	1,307	1,918	2,909	4,116	5,411	6,574	38.1

**Key Assumptions:**

Cellular and PCS carriers will continue to attract new subscribers and encourage higher use levels among existing subscribers.

Cellular and PCS carriers will continue to expand their target markets for service.

**Messages in the Data:**

The average yearly wireless MOUs per subscriber will grow at a CAGR of 38.1% between 1999 and 2004.

An increase in the number of cellular/PCS phones per household will account for some of the growth in MOUs.

Source: IDC, 2000

Over the forecast period, cellular/PCS household MOUs will increase at a compound annual growth rate (CAGR) of 47.6%, from 155 minutes per month in 1999 to 1,082 minutes per month in 2004. However, not all of this increase will be from existing subscribers increasing their use. An increase in the number of cellular/PCS phones per household will account for some of the growth in MOUs. Specifically, the number of cellular/PCS phones per household is expected to grow at a CAGR of 6.8%, from 1.42 in 1999 to 1.98 in 2004. At the same time, cellular/PCS use by the individual subscriber will increase from 109 minutes per month in 1999 to 548 in 2004.

IDC calculated average yearly wireless MOUs, landline MOUs, and total telecom MOUs. Wireless and landline MOUs were then calculated as a percentage of total telecom MOUs. The results are shown in Table 2.

In summary, the growth of total annual wireless MOUs will be strong, increasing at a CAGR of 57.5%, from approximately 93 billion in 1999 to 898 billion in 2004.

On the landline side, growth in MOUs is expected to be more moderate. Landline MOUs should grow at a CAGR of 8.0%, from 3.1 trillion in 1999 to 4.5 trillion in 2004.

**Table 2 - U.S. Yearly Wireless and Landline Telecom Minutes of Use, 1999-2004 (B)**

	1999	2000	2001	2002	2003	2004	1999-2004 CAGR (%)
Yearly wireless MOUs	93	160	278	447	661	898	57.5
Yearly landline MOUs	3,061	3,307	3,576	3,870	4,164	4,495	8.0
Yearly total telecom MOUs	3,154	3,467	3,854	4,317	4,825	5,393	11.3
Wireless as a share of total telecom MOUs (%)	2.9	4.6	7.2	10.4	13.7	16.6	41.5
Landline as a share of total telecom MOUs (%)	97.1	95.4	92.8	89.6	86.3	83.4	-3.0

**Key Assumptions:**

Cellular/PCS carriers will continue to attract new subscribers and encourage higher use levels among existing subscribers.

Cellular/PCS carriers will continue to expand their target markets for service.

Access-line growth will continue at approximately 3-4% per year over the forecast period due to population growth, housing

growth, and the continuing trend of second-line installations.  
Messages in the Data:

- The growth of total wireless MOUs will be strong, from 93 billion in 1999 to 398 billion in 2004.

- Landline MOUs will also experience strong growth throughout the forecast period.

Source: IDC, 2000

Overall, total telecom MOUs are forecast to increase from 3.2 trillion in 1999 to 5.4 trillion in 2004. Comparatively, the CAGR for wireless MOUs is considerably stronger than that for landline MOUs: 57.5% versus 8.0%. Therefore, over the forecast period, wireless MOUs as a percentage of total telecom MOUs will increase considerably, from 2.9% in 1999 to 16.6% in 2004, whereas landline MOUs as a percentage of total MOUs will decrease, from 97.1% in 1999 to 83.4% in 2004.

Table 3 shows the voice and data MOUs split for both landline and wireless. In 1999, nearly all wireless MOUs were voice; approximately 6% were data. Wireless data MOUs are expected to increase at a CAGR of 122.1%, from 1 billion in 1999 to 54 billion in 2004. On the landline side, the voice/data split is very different. Data MOUs represented approximately 30% of the landline MOUs in 1999. The landline data MOUs are expected to increase from 918 billion minutes in 1999 to 2.5 trillion in 2004, reflecting a CAGR of 21.9%. The split between data and voice landline MOUs shifts from 30/70 in 1999 to 55/45 in 2004. On the wireless side, the split between data and voice shifts from 1/99 to 6/94 during the same period. Overall, wireless data MOUs remain low compared with total telecom MOUs.

Table 3 - U.S. Wireless and Landline Voice and Data Telecom Minutes of Use, 1999-2004 (B)

	1999	2000	2001	2002	2003	2004	1999-2004 CAGR (%)
Yearly wireless voice MOUs	92	157	270	429	628	844	55.8
Yearly wireless data MOUs	1	3	8	18	33	54	122.1
Yearly landline voice MOUs	2,143	2,150	2,146	2,129	2,082	2,023	-1.1
Yearly landline data MOUs	918	1,157	1,430	1,742	2,082	2,472	21.9

**Key Assumptions:**

- Cellular/PCS carriers will continue to attract new subscribers and encourage higher use levels among existing subscribers.

- Cellular/PCS carriers will continue to expand their target markets for service.

- Access-line growth will continue at approximately 3-4% per year over the forecast period due to population growth, housing growth, and the continuing trend of second-line installations.

**Messages in the Data:**

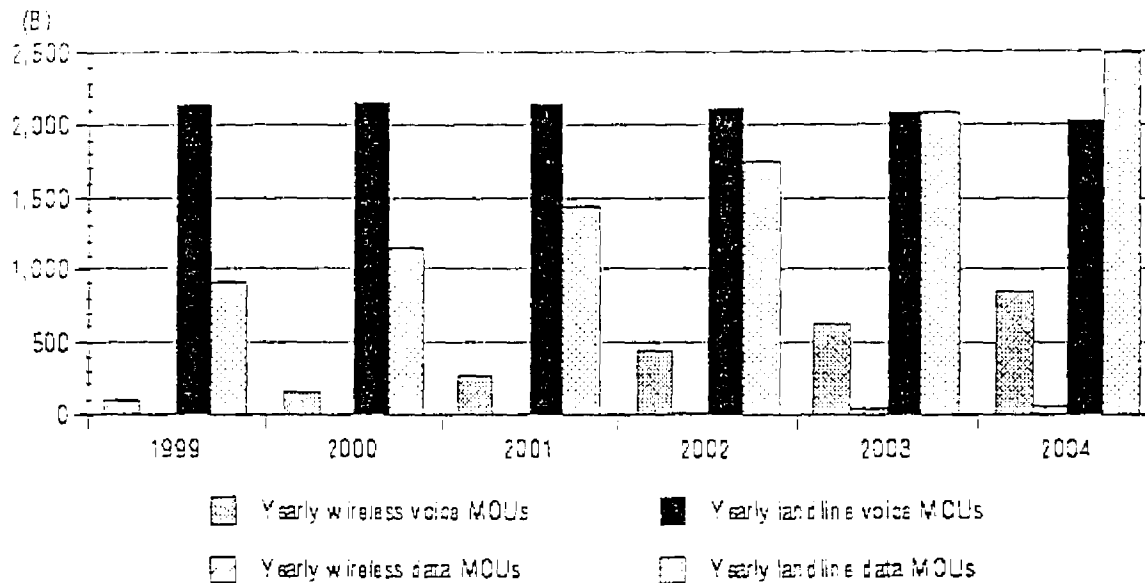
- Wireless data MOUs are expected to increase at a CAGR of 122%, from 1 billion in 1999 to 54 billion 2004.

- In 2004, wireless voice MOUs will represent about 5% of the landline voice MOUs.

Source: IDC, 2000

Figure 5 shows the wireless/landline and voice/data splits. Wireless data, although represented by the smallest bar on the graph, is growing at the fastest rate: at a CAGR of about 122.1% over the five-year forecast period. This growth is closely followed by the CAGR for the wireless voice MOUs, which is approximately 55.8%. In 2004, wireless voice MOUs will be equal to 22% of the total telecom voice MOUs.

Figure 5 - U.S. Wireless and Landline Voice and Data Telecom Minutes of Use, 1999-2004



Source: IDC, 2000

Table 4 shows the split of wireless and landline MOUs by consumer and business segments. Wireless consumer MOUs will increase at a CAGR of 65.1%, from 45 billion minutes in 1999 to 556 billion minutes in 2004. Landline consumer MOUs also will increase over the forecast period, although at a much slower rate of 3.5% per year. In 1999, landline consumers used 1.2 trillion minutes; in 2004, they will use 1.4 trillion minutes (voice and data).

Table 4 - U.S. Wireless and Landline Business and Consumer Telecom Minutes of Use, 1999-2004 (B)

	1999	2000	2001	2002	2003	2004	1999-2004 CAGR (%)
Yearly wireless consumer MOUs	45	85	156	259	397	556	65.1
Yearly wireless business MOUs	47	75	122	188	265	341	48.5
Yearly landline consumer MOUs	1,213	1,267	1,299	1,373	1,407	1,442	3.5
Yearly landline business MOUs	1,848	2,040	2,277	2,497	2,757	3,053	10.6
<b>Total consumer MOUs</b>	<b>1,258</b>	<b>1,352</b>	<b>1,454</b>	<b>1,633</b>	<b>1,804</b>	<b>1,999</b>	<b>9.7</b>
<b>Total business MOUs</b>	<b>1,895</b>	<b>2,115</b>	<b>2,400</b>	<b>2,685</b>	<b>3,021</b>	<b>3,394</b>	<b>12.4</b>

## Key Assumptions:

- Cellular/PCS carriers will continue to attract new subscribers and encourage higher use levels among existing subscribers.
- Cellular/PCS carriers will continue to expand their target markets for service.
- Access-line growth will continue at approximately 3-4% per year over the forecast period due to population growth, housing growth, and the continuing trend of second-line installations.

## Message in the Data:

- Wireless will make up approximately 17% of the total telecom MOUs in 2004.

Source: IDC, 2000

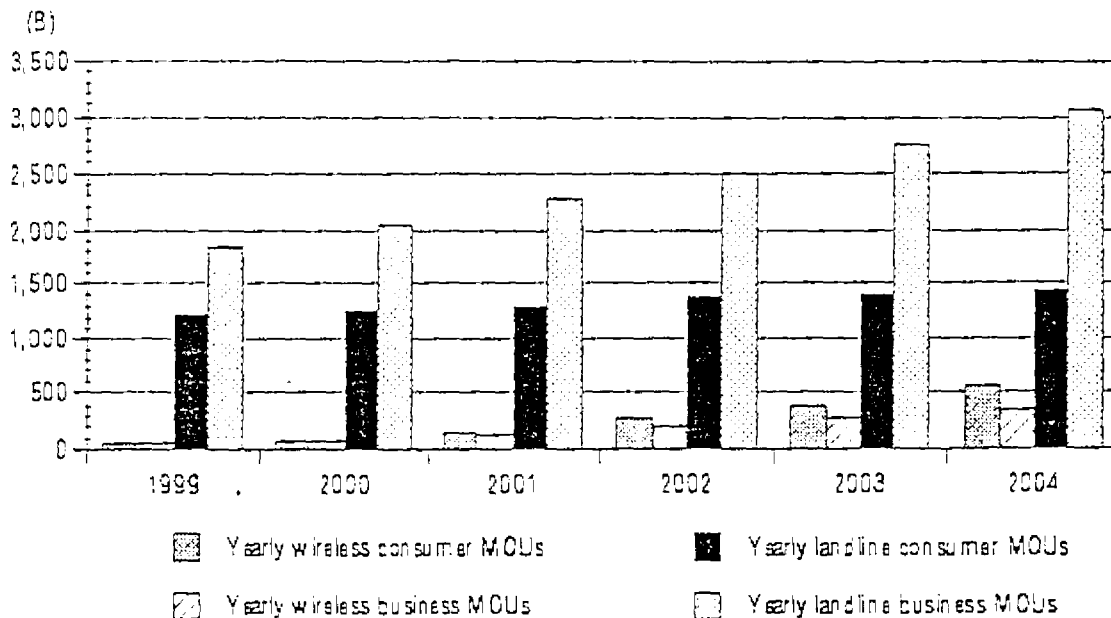
Wireless business MOUs will increase at a CAGR of 48.5%, from 47 billion in 1999 to 341 billion in 2004. Landline business MOUs will increase from 1.8 trillion minutes in 1999 to 3.1 trillion in 2004, reflecting a CAGR of 10.6%.

Figure 6 shows the wireless/landline and business/consumer MOU splits. The group of wireless consumer MOUs is the fastest growing of the segments. In 2000, wireless consumer MOUs will surpass

wireless business MOUs. Overall, wireless MOUs are a small part of the total telecom MOUs, but wireless use is growing quickly.

Table 5 shows the percentage of wireless subscribers who are landline replacers, according to the three types of replacement: those who completely replace landline, those who purchase wireless instead of additional landlines, and those who migrate some landline MOUs with wireless.

Figure 6 - U.S. Wireless and Landline Business and Consumer Telecom Minutes of Use, 1999-2004



Source: IDC, 2000.

Table 5 - U.S. Types of Landline Replacers, 1999-2004 (%)

	1999	2000	2001	2002	2003	2004	1999-2004 CAGR (%)
Total landline replacement	5.5	6.0	8.0	10.0	12.0	14.0	20.6
Wireless instead of additional landlines	11.0	12.0	13.5	15.0	17.0	19.0	11.6
Wireless replacement of landline MOUs	45.7	49.0	52.1	55.0	57.5	59.0	6.2

**Key Assumptions:**

- People will continue to use landlines for data.
- Cellular/PCS carriers will continue to reduce or eliminate roaming and long distance charges.
- Some subscribers replacing some landline MOUs with wireless might be total landline replacers in future years. Therefore, growth in wireless replacement MOUs will be slower than the other categories of landline replacers.

**Messages in the Data:**

- In 2004, approximately 92% of wireless subscribers will use their wireless phones instead of landlines.
- The largest group of replacers will be those who replace some landline MOUs with wireless.

Source: IDC, 2000

The largest group of replacers will be those who migrate some landline MOUs to wireless. In 1999, approximately 44% of wireless subscribers fell into this group. By 2004, approximately 60% of wireless users will migrate landline MOUs to wireless. The second largest group is the group of subscribers who purchase wireless instead of additional landlines, and the smallest group of replacers is the group who

completely replaces landline with wireless. Over 94% of subscribers will, in one way or another, transfer landline MOUs to wireless by 2004.

### *Forecast Assumptions*

IDC made the following assumptions in making its landline replacement forecast:

- This forecast relies on the forecast and assumptions made in *U.S. Wireless Services and Devices Market Assessment, 1999-2004* (IDC 22214, April 2000) as well as those made in *U.S. Residential Landline Telecommunications Market Assessment and Forecast, 1999-2004* (IDC 22720, September 2000).
- Cellular/PCS carriers will continue to attract new subscribers and encourage higher use levels among existing subscribers by offering attractive rate plans.
- Cellular/PCS carriers will continue to expand their target markets for service.
- Cellular/PCS carriers will continue to bundle value-added services, such as caller ID and voicemail, as part of their offerings.
- Cellular/PCS carriers will continue to reduce or eliminate roaming and long distance charges.
- Cellular/PCS carriers will continue to offer off-peak special rates such as free nights and weekends to encourage use during off-peak times.
- Replacers who replace only some MOUs will migrate into the total replacement category.
- Strong economic growth over the forecast period will continue to drive MOU increases.
- Increased competition in the long distance sector will generate additional price reductions, which will translate into strong MOU growth.
- Access-line growth will continue at approximately 3-4% per year over the forecast period due to population growth, housing growth, and the continuing trend of second-line installations.
- Growth in toll-free and private-line minutes will be strong as a result of network access integration. As more companies adopt the use of private lines for Internet access, they will also migrate their voice traffic to these dedicated circuits.

### *Additional Comments*

IDC has fielded many questions on how much growth in the wireless MOUs represents new minutes of use versus those that have migrated to landline. Unfortunately, there is no easy answer, although comparing the growth of landline MOUs to that sector's growth just a few years ago can shed some light on the issue. Still, one can only assume with rate plans that include night and weekend minutes for no charge and long distance at no charge, it is cheaper to use wireless over landline in many situations -- already a practice of many users.

Another issue that comes up over and over is the percentage of replacement that is long distance versus local calling. This area, too, is difficult to quantify. Long distance calling is often much cheaper with a wireless phone because domestic long distance charges are included in many rate plans and because wireless home calling areas often expand farther than local landline calling areas.



BROADCAST TRANSCRIPT

Video Monitoring Services of America, Inc.  
One Broadway, Suite A-210  
Denver, CO 80203  
(303) 733-8000  
(303) 733-8080 (FAX)

Date September 26, 2001  
Time 06:15 PM - 06:15 PM  
Station KOAT-TV (ABC) Channel Seven  
Location Albuquerque/Santa Fe, N.M.  
Program Advertising Spot

Unidentified Man: (Visual of Unidentified Man and  
Unidentified Woman sitting on a neon green couch in a  
field) The whole neighborhood thinks I'm nuts.

Unidentified Woman: Dad, did you answer the door in your  
boxer shorts again?

Unidentified Man: I got her a Cricket phone.

Unidentified Woman: And it's so cool. I can call my  
friends whenever I want.

Unidentified Man: Everyone thinks she'll run up huge bills  
on me, but with Cricket she can't. I just pay twenty-nine  
ninety-five a month, and she can make all the local calls  
she wants. It even includes all her incoming calls, so I  
can check up on her as much as I want.

Unidentified Woman: Embarrassing, but not as bad as him in  
his boxers.

BROADCAST TRANSCRIPT

Video Monitoring Services of America, Inc.  
One Broadway, Suite A-210  
Denver, CO 80203  
(303) 733-8000  
(303) 733-8080 (FAX)

Date September 26, 2001  
Time 05:26 PM - 05:26 PM  
Station KOAT-TV (ABC) Channel Seven  
Location Albuquerque/Santa Fe, N.M.  
Program Advertising Spot

Unidentified Man #1: (Visual of Unidentified Man #1 and  
Unidentified Man #2 sitting on a neon green couch in a  
field) I just moved into my apartment. But I got the basics  
covered. Food, electricity...

Unidentified Man #2: Cable?

Unidentified Man #1: You know it. But no home phone. Know  
why?

Unidentified Man #2: Because nobody wants to talk to you?

Unidentified Man #1: No, smart guy. Because Cricket's the  
only phone I need. It's just twenty-nine ninety-five a  
month for all my local calls. So with Cricket, I don't need  
anything else.

Unidentified Man #2: Except furniture. (Visual of the two  
men carrying the couch away)

Announcer: (Graphic: Limited Time Offer!) Hurry, and get a Nokia phone for only sixty-nine ninety-five plus tax, and your first month of service is free.

##

For a videocassette(TV) or audiocassette(radio) of this news segment contact your nearest VHS office  
Material supplied by Video Monitoring Services may only be used for internal review, analysis or research.  
Any publication, re-broadcast or public display for profit is forbidden.

**for your teen ...**  
**And save what's left of your sanity!**

*Jason, the budding football hero, never knows when his practice will be over — With Cricket, when he's ready to come home, it's his call ...*

*Jenny just can't stop talking about the new "totally hot" guy in biology class — With Cricket she can compare notes with Beth for hours, and hours, and hours ...*

*Jason wants to borrow the car on Friday night — It's his first big dance. Mom can't do anything about the T-shirt he's wearing, but she'll always know how to reach him ...*

*Dad hates surprises on the phone bill — Cricket service is predictable each month ... even if he can never predict what Jenny will do next!*

*Mom knows Jason just wants a little more freedom — With Cricket, he gets what he wants ... and Mom gets a little peace of mind!*

**All Local Calls**  
**\$29.95**  
per month plus tax

They can talk all they want — all around town — it's one low price! Let's face it. You're dealing with a force of nature: Teenagers spend hours on the phone. Cricket is the "parent sanity tool" you can use to help you through the teen years. And you'll both love it! Now, for one low monthly price, your teen can make unlimited local calls within your area — anytime of the day or night. Cricket is the Around-Town Phone™ that lets you and your teen stay in touch where you live, work, or play.

**cricket**

- No contract!
- No setup fees!
- No complicated rate plan!
- No counting minutes!
- No hidden charges!
- No surprises!
- No waiting for your phone!

For just \$49.99 you get a Cricket phone — Plus, your first month of service is FREE! Getting started with Cricket is easy. For just \$49.99 (price includes coupon discount) you get a new Motorola V2267 phone. PLUS, your first month of Cricket service is FREE! Then, every month, you pay the same predictable amount — \$29.95 plus tax for all local calls. Cricket wireless — it's one awesome tool you can use to help survive the teen in your house. But hurry: This offer, like this "phase," won't last long.

Bring this coupon to the Cricket Store nearest you —  
 Get \$40 off your Cricket phone and your first month of service, FREE!

**Don't get another phone line. Get Cricket!**

Another home phone	Cricket wireless phone
• Expensive installation charges — Up to \$75*	• No installation charges!
• Wait around for the installer. Will they show up?	• Pick up your new phone at your convenience!
• High monthly bill	• One low price — \$29.95 for all local calls
• Unpredictable charges	• You pay the same low price every month
• Hard-wired to the house	• Take Cricket with you all around town!

**Cricket — the simple, affordable,**  
**Around-Town Phone™ for the teen in your house!**

**cricket**  
© 2000 Cricket Wireless

OFF Here's a new solution to the age-old problem! OFF

Mr. Thomas W Olson

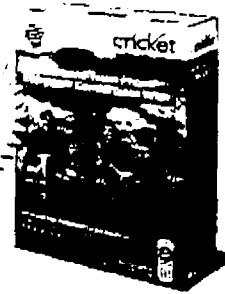
Bring this coupon  
to the Cricket store at:  
Villa Linda Mall - Mall Cart  
PO Box 29652  
Santa Fe

Offer expires: 11/18/01  
One coupon per phone.  
Code: PNC0320712

Your Cricket Phone Includes:

- Clear, digital calling
- Long-life battery —  
talk up to 3 hours
- Travel charger
- 2 PhoneWrap covers
- Phone belt clip

Only  
**\$49.99**  
with this  
coupon



cricket

OPEN

NEW TELEPHONE

Save \$40 on  
a tool to help you  
cope with those  
crazy teen years ...

Mr. Thomas W Olson  
116 La Paloma St  
Santa Fe, NM 87505-4007



Inside: A tool  
that just might  
save your sanity!

NEW STATEMENT

STATEMENT

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SES, Inc.

AFFIDAVIT OF NANCY WALDEN

STATE OF NEW MEXICO       )  
  ) ss.  
COUNTY OF BERNALILLO    )

Nancy Walden, being first duly sworn, deposes and states:

1. I reside in Albuquerque, New Mexico and am employed by Bank of America.
2. I have subscribed to wireless telephone service through Cricket Communications for approximately ten months. My telephone numbers are 505-261-6979, 505-261-0617, and 505-261-0518.
3. I learned of Cricket's service through its radio and television advertising. I purchased this service as an alternative to additional landline telephone service for my Children and me. The service allows me to keep in contact with my children and the flat rate unlimited local service feature makes it more attractive than measured wireless service.

FURTHER AFFIANT SAYETH NAUGHT.

Nancy Walden

SUBSCRIBED and SWORN TO before me by Nancy Walden this 15<sup>th</sup> day of November, 2001.

Terrie Gower  
Notary Public

My Commission Expires:

03/19/2002

AFFIDAVIT OF ALYSSA CAMPBELL

STATE OF NEW MEXICO            )  
  ) ss.  
COUNTY OF BERNALILLO        )

Alyssa Campbell, being first duly sworn, deposes and states:

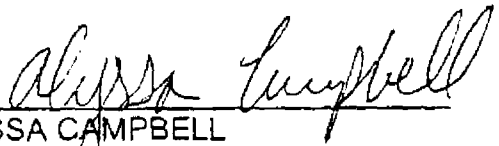
1.     I reside in Albuquerque, New Mexico and am employed as a Fashion Consultant by Victoria's Secret. I have subscribed to wireless telephone service through Cricket Communications for approximately three months. My telephone number is (505) 304-0732.

2.     I learned of Cricket's service through its radio and television advertising. I purchased this service as an alternative to traditional landline telephone service. The service fills my needs for telephone service better than traditional telephone service, as I use it both at home and when I am away from home.

During the time I have subscribed to Cricket's service, I have moved my residence once. The move did not affect my Cricket service. In contrast, I would have had to terminate and reconnect landline service when I moved, resulting in more expense to me.

3.     There is no landline service in my apartment. My two roommates also subscribe to Cricket service.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
ALYSSA CAMPBELL

SUBSCRIBED and SWORN TO before me by ALYSSA CAMPBELL this 15<sup>th</sup> day of November, 2001.

My Commission Expires:

12-1-07

G. Marcia Kercher  
Notary Public



AFFIDAVIT OF STEPHANIE GALLEGOS

STATE OF NEW MEXICO )

) ss.

COUNTY OF SANTA FE )

STEPHANIE GALLEGOS, being first duly sworn, deposes and states:

1. I reside in Santa Fe, New Mexico and am employed by Target Stores.

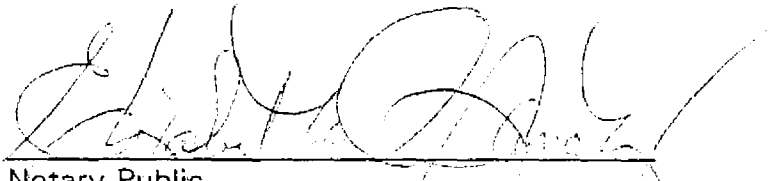
2. I have subscribed to wireless telephone service through Cricket Communications for approximately 7 months. My telephone number is (505) 316-5295. I formerly had landline service at my residence, but terminated that service approximately 6 months ago. I also subscribe to Cricket service for my teen-aged daughter who lives with me.

3. I learned of Cricket's service through its radio and television advertising. After purchasing my Cricket service I determined that it fills my need for telephone service in my residence, and I have the added advantage of being able to carry the telephone with me. I therefore terminated my landline service and have no intention of purchasing landlines service at this time.

FURTHER AFFIANT SAYETH NAUGHT.

  
STEPHANIE GALLEGOS

SUBSCRIBED and SWORN TO before me by STEPHANIE GALLEGOS this 15<sup>TH</sup> day of November, 2001.

  
Notary Public

My Commission Expires:



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF QWEST  
CORPORATION'S SECTION 271  
APPLICATION AND MOTION FOR  
ALTERNATIVE PROCEDURE TO  
MANAGE THE SECTION 271 PROCESS

Utility Case No. 3269

TRACK A REBUTTAL TESTIMONY OF JOHN BADAL

Qwest Corporation hereby submits the attached Track A Rebuttal  
Testimony of John W. Badal. Mr. Badal's affidavit attesting to the testimony was  
not available at the time of filing and will be submitted as soon as possible.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By 

Thomas W. Olson  
Post Office Box 2307  
Santa Fe, NM 87504-2307  
(505) 982-3873

Attorneys for Qwest Corporation

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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IN THE MATTER OF QWEST	)	
CORPORATION'S SECTION 271	)	
APPLICATION AND MOTION FOR	)	UTILITY CASE NO. 3269
ALTERNATIVE PROCEDURE TO	)	
MANAGE THE SECTION 271 PROCESS	)	

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TRACK A REBUTTAL TESTIMONY

OF

JOHN BADAL

QWEST CORPORATION

January 11, 2002

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**I. IDENTIFICATION OF WITNESS**

**Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND CURRENT POSITION.**

**A.** I am John Badal, Vice President and General Manager – New Mexico, for Qwest Corporation (“Qwest”). My business address is 400 Tijeras, NW, Albuquerque, NM 87102.

**Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES IN YOUR CURRENT POSITION.**

**A.** I am responsible for the development and management of public policy, regulatory and legislative issues as they relate to the delivery of telecommunications services within the State of New Mexico, which include the construction of telecommunications infrastructures, the delivery of telecommunications services, and the improvement in quality of those services in New Mexico.

**Q. ARE YOU THE SAME JOHN BADAL WHO FILED A DIRECT AFFIDAVIT IN THIS PROCEEDING ON OCTOBER 5, 2001, AND DIRECT TESTIMONY ON NOVEMBER 16, 2001?**

**A.** Yes.

1  
2                   **II.     OVERVIEW OF TESTIMONY**  
3

4   **Q.     WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5   A.     My rebuttal testimony mainly addresses the issues raised by Mr. Michael S.  
6           Ripperger on behalf of the Advocacy Staff of the New Mexico Public Regulation  
7           Commission and Ms. Diane Roth on behalf of AT&T concerning the presence of  
8           competition in the residential local exchange market from Leap Wireless's  
9           broadband PCS service, sold under the brand name Cricket. In my testimony, I  
10          demonstrate that Qwest's largely unrebutted evidence shows that a more than *de*  
11          *minimis* number of residential customers in New Mexico are replacing their  
12          traditional wireline service with wireless service from Cricket. The FCC has held  
13          that broadband PCS service providers like Leap can be treated as a "competing  
14          provider" for the purposes of Track A if it is being used as a replacement for  
15          wireline service. The FCC has also expressly recognized that Cricket subscribers in  
16          particular are using their wireless service as a substitute for wireline service.  
17          Therefore, the evidence Qwest has presented of residential customers in New  
18          Mexico purchasing Cricket as a replacement for wireline service establishes the  
19          existence of competition in the residential market in this state.

20  
21   **Q.     DO YOU PLAN TO ADDRESS MR. RIPPERGER'S AND MS. ROTH'S**  
22   **DISCUSSIONS OF THE INTRADO REPORT?**

1 A. No. Both Mr. Ripperger and Ms. Roth discuss at length the flaws they perceive in  
2 the Intrado E911 data I cited in my Direct Testimony of November 16, 2001.<sup>1</sup>  
3 Qwest, however, has already submitted a motion to withdraw that evidence.<sup>2</sup> While  
4 I take issue with almost of all of Mr. Ripperger's and Ms. Roth's characterizations  
5 of the Intrado data and Qwest's presentation of that data and do not concede that  
6 their arguments have any merit, there is no reason to continue to debate that  
7 evidence at this time.

8

9 Q. DO MR. RIPPERGER AND MS. ROTH ACCURATELY DESCRIBE THE  
10 PROCEDURAL BACKGROUND TO THIS PROCEEDING?

11 A. No. The witnesses have failed to describe fairly the procedural history of this  
12 proceeding. Therefore, it is necessary to summarize that history here.

13

14 Q. PLEASE SUMMARIZE THE PROCEDURAL BACKGROUND OF THIS  
15 INQUIRY.

16 A. In his Report on Track A, the multistate Facilitator, Mr. John Antonuk, erroneously  
17 concluded that Qwest had not satisfied the residential competition component of

---

<sup>1</sup> See See Testimony of Michael S. Ripperger in Response to Qwest's New Mexico Specific Tract [sic] A Evidence, *In the Matter of Qwest Corporation's Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process*, Utility Case No.3269 (Dec. 31, 2001), Public Version, at 20:20-33:20 ("Ripperger Test."); Testimony of Diane F. Roth on Behalf of AT&T Communications of the Mountain States, Inc. Regarding Track A, *In the Matter of Qwest Corporation, Inc.'s Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process* (Dec. 31, 2001), Public Version, at 6:21-7:13 ("Roth Test.").

<sup>2</sup> See Qwest Corporation's Motion to Withdraw Testimony Regarding E911 Data, *Qwest Corporation's Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process*, Utility Case No. 3269 (Dec. 27, 2001).

1 Track A because Qwest had not shown the existence of residential competition.<sup>3</sup> In  
2 response, Qwest made two arguments to the Commission in its Comments on the  
3 Facilitator's Report: First, Qwest argued that its evidence of resale-based residential  
4 competition was already sufficient to satisfy Track A; second, Qwest noted that  
5 facilities-based residential competition was present in New Mexico.<sup>4</sup> In support of  
6 the second point, Qwest submitted my affidavit discussing evidence of PCS-based  
7 wireless competition from Leap Wireless's Cricket service.<sup>5</sup> Qwest pointed out that  
8 PCS-based service was treated by the FCC as facilities-based competition if  
9 customers are using the PCS service as a substitute for, and not a supplement to,  
10 wireline service. Qwest also submitted evidence that the Leap Wireless's PCS  
11 offering, Cricket, was being used by residential customers in New Mexico as a  
12 substitute for wireline service.

13  
14 **Q. WHAT IS THE PURPOSE OF THIS INQUIRY?**

15 **A.** The purpose of this proceeding is to evaluate the evidence of resale-based and  
16 facilities-based residential competition in New Mexico. With respect to the latter,  
17 the Commission stated that it wished to examine "the information contained in the  
18 Affidavit of John W. Badal that purports to 'document certain updated and

---

<sup>3</sup> Facilitator's Report on Group 5 Issues: General Terms and Conditions, Section 272, and Track A (Sep. 21, 2001) at 80 ("Facilitator's Report").

<sup>4</sup> Qwest's Comments, Exceptions and Brief Regarding the Facilitator's Report on Group 5 Issues, *In the Matter of Qwest Corporation's Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process*, Utility Case No. 3269 (Oct. 5, 2001) at 18-23 ("Qwest's Comments").

<sup>5</sup> See generally Affidavit of John W. Badal, *In the Matter of Qwest Corporation's Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process*, Utility Case No. 3269



1 additional information . . . regarding the extent to which local exchange service is  
2 provided to residential customers in New Mexico by carriers competing with  
3 Qwest.”<sup>6</sup> The rebuttal testimony of Mr. Teitzel addresses the issue of resale-based  
4 residential competition, while this testimony addresses the issue of facilities-based  
5 residential competition. Because the Facilitator has already found that Qwest has  
6 established the presence of facilities-based business competition in New Mexico,  
7 Qwest can fully satisfy the Track A requirements for the state by showing the  
8 presence of at least one CLEC serving a more than *de minimis* number of residential  
9 customers through either resale-based or facilities-based (including broadband PCS)  
10 service.

11  
12 **III. EVIDENCE OF PCS-BASED RESIDENTIAL COMPETITION**  
13

14 **Q. HAVE MR. RIPPERGER AND MS. ROTH ACCURATELY DESCRIBED**  
15 **THE APPLICABLE LEGAL STANDARDS IN THIS PROCEEDING?**

16 **A.** No. Both witnesses have misstated the relevant legal standards governing this  
17 proceeding. It is therefore necessary to rebut their legal analysis here.

18  
19 **Q. HAS THE FCC HELD THAT WIRELESS PCS SERVICE CAN SERVE AS**  
20 **EVIDENCE OF FACILITIES-BASED COMPETITION FOR THE**

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(Oct. 5, 2001).

<sup>6</sup> *Id.* ¶ 9 (citations omitted).

1           **PURPOSES OF TRACK A?**

2    A.    Yes. As Qwest noted in its Comments on the Facilitator's Report,<sup>7</sup> the FCC has  
3           expressly held that "BOCs, in filing section 271 applications, can rely on the  
4           presence of broadband PCS providers to satisfy Track A,"<sup>8</sup> as long as the wireless  
5           service directly "competes with the . . . telephone exchange service offered by [the  
6           applicant in the relevant state]."<sup>9</sup> The "BOC must show that broadband PCS is  
7           being used to replace wireline service, not as a supplement to wireline."<sup>10</sup> A  
8           customer may "replace" her wireline service by either dropping a preexisting  
9           telephone line or by foregoing a first or second line in favor of a PCS phone. The  
10          broadband PCS service must also meet the Act's definition of "telephone exchange  
11          service" as "service within a telephone exchange, or within a connected system of  
12          telephone exchanges within the same exchange area operated to furnish to  
13          subscribers intercommunicating service of the character ordinarily furnished by a  
14          single exchange, and which is covered by the exchange service charge."<sup>11</sup>

15  
16    Q.    **HAS THE FCC DECIDED WHETHER BROADBAND PCS SERVICE**  
17           **QUALIFIES AS "TELEPHONE EXCHANGE SERVICE?"**

18    A.    Yes. The FCC has specifically held that two-way "[t]elephone service offered by a

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<sup>7</sup> See Qwest's Comments at 19-20.

<sup>8</sup> Memorandum Opinion and Order, *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd 20599 ¶ 25 (1998) ("Second BellSouth Louisiana Order").

<sup>9</sup> *Id.* (quotation marks omitted).

<sup>10</sup> *Id.* ¶ 31.

<sup>11</sup> *Id.* ¶ 26 (citing 47 U.S.C. § 153(47)(A)).

1 broadband PCS provider comes within this description,” since “[s]ubscribers within  
2 a PCS provider’s geographic service area . . . are interconnected to the public  
3 switched network by means of a central switching complex, and thus are able to  
4 place and receive calls both to other users of the PCS system and to users of other  
5 networks connected to the public switched network.”<sup>12</sup>

6  
7 **Q. IS LEAP WIRELESS A BROADBAND PCS PROVIDER?**

8 A. Yes. According to the FCC’s Universal Licensing System, every wireless license  
9 that Leap or Cricket holds in New Mexico is for broadband PCS service.<sup>13</sup>

10  
11 **Q. MUST A CLEC PROVIDE SERVICE AT THE SAME PRICE AS THE BOC**  
12 **IN ORDER QUALIFY AS A “COMPETING PROVIDER?”**

13 A. No. Track A does not require CLECs to be offering exactly service at the same  
14 prices as the BOC. As the FCC acknowledged in the *Ameritech Michigan Order*,  
15 the House of Representatives rejected a version of Track A that would have  
16 demanded the presence of a CLEC capable of offering “service that is comparable in  
17 price, features, and scope” to that offered by the BOC.<sup>14</sup> As a result, the fact that a  
18 CLEC is offering PCS service at a higher price than the wireline service offered by  
19 the BOC is not relevant for the purposes of Track A. In the *Second BellSouth*

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<sup>12</sup> *Id.* ¶ 28.

<sup>13</sup> See <<http://wireless.fcc.gov/uls/>>. The Cricket licenses for New Mexico are BTA008 (Albuquerque), BTA407 (Santa Fe), BTA162 (Gallup), and BTA386 (Roswell).

<sup>14</sup> See Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, 12

1        *Louisiana Order*, the FCC held that, “even though there may not be complete  
2        identity in technical configuration, service characteristics, or charges for service  
3        between broadband PCS and traditional wireline service,”<sup>15</sup> a PCS provider can  
4        qualify as “competing provider” under Track A because the two services are  
5        “functionally equivalent.”<sup>16</sup> As the FCC noted later in that Order, “customers may  
6        be willing to pay a premium for PCS service in light of the benefits of mobility,” but  
7        that does not prevent the PCS service from being used as a substitute for wireline  
8        service.<sup>17</sup>

9  
10    **Q.    MUST A CLEC PROVIDE SERVICE WITH THE SAME FEATURES OR**  
11        **WITH THE SAME CALLING AREA AS THE BOC IN ORDER QUALIFY**  
12        **AS A “COMPETING PROVIDER?”**

13    **A.**    No. The service offered by a CLEC can differ in features and calling area from that  
14        offered by the BOC and still qualify under Track A. As discussed above, the FCC  
15        has acknowledged that the House of Representatives rejected a version of Track A  
16        that would have required a BOC to show that CLECs are capable of offering  
17        “service that is comparable in price, *features, and scope*” to that offered by the  
18        BOC.<sup>18</sup> The fact that the Cricket local calling area might be different from the  
19        Qwest local calling area therefore has no legal significance.

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FCC Rcd 20543 n.170 (1997) (quoting H.R. Rep. No. 104-204, at 7 (1995)).

<sup>15</sup> *Second BellSouth Louisiana Order* ¶ 29 (1998).

<sup>16</sup> *Id.* ¶ 29.

<sup>17</sup> *Id.* ¶ 32.

<sup>18</sup> *Ameritech Michigan Order* ¶77 n. 170 (quoting H.R. Rep. No. 104-204, at 7 (1995)) (emphasis

1

2 Q. ON PAGE 8 OF HER TESTIMONY MS. ROTH ARGUES THAT A BOC  
3 MUST PROVIDE MARKETING STUDIES IN ORDER TO ESTABLISH  
4 THAT CUSTOMERS ARE REPLACING THEIR WIRELINE SERVICE  
5 WITH PCS SERVICE. IS SHE CORRECT?

6 A. No. Ms. Roth argues that the FCC requires a BOC to "[p]rovide evidence such as a  
7 study or survey showing that customers are actually subscribing to Cricket service in  
8 lieu of Qwest service."<sup>19</sup> Ms. Roth's reading of that Order is incorrect. As Mr.  
9 Ripperger acknowledged,<sup>20</sup> the FCC held that "[e]vidence that broadband PCS  
10 service constitutes a competitive alternative *could* include studies, or other objective  
11 analyses," but it also held that "[e]vidence of marketing efforts by broadband PCS  
12 providers designed to induce such replacement are also relevant."<sup>21</sup> While a  
13 marketing study might be an ideal evidentiary showing, the FCC has not held that a  
14 study is an absolute requirement for establishing the existence of PCS-based  
15 competition. For this reason, Ms. Roth's argument that my discussion of the *Second*  
16 *BellSouth Louisiana Order* is "incomplete"<sup>22</sup> misstates the FCC's holding in that  
17 decision.

18

19 Q. PLEASE DISCUSS MR. RIPPERGER'S SUGGESTION THAT THE FCC'S

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added).

<sup>19</sup> Roth Test. at 8:12-13.

<sup>20</sup> Ripperger Test. at 42:8-16.

<sup>21</sup> *Second BellSouth Louisiana Order* ¶ 31 (emphasis added).

<sup>22</sup> Roth Test. at 8:6-13.

1        **FAILURE TO FIND THE PRESENCE OF PCS-BASED COMPETITION IN**  
2        **LOUISIANA WOULD PROHIBIT THE COMMISSION FROM FINDING**  
3        **PCS-BASED COMPETITION IN NEW MEXICO.**

4        A.    Mr. Ripperger's suggests that, because the FCC did not find that BellSouth had  
5        established the presence of PCS-based competition in Louisiana, Qwest's evidence  
6        of PCS-based competition must also fail.<sup>23</sup> He also argues that I misrepresented the  
7        FCC's findings in the *Second BellSouth Louisiana Order* and that the "evaluation of  
8        whether PCS wireless should be considered as competition for Track A purposes is  
9        far more complicated than Mr. Badal suggests."<sup>24</sup> Mr. Ripperger's argument is  
10       unfair and itself misleading. First, as noted above, Qwest included a detailed  
11       discussion of the FCC's standard for a showing of PCS-based competition in the  
12       Comments on the Facilitator's Report to which my affidavit was attached. Mr.  
13       Ripperger's suggestion that my affidavit and testimony has misrepresented the  
14       FCC's legal standard simply ignores those Comments. Second, neither Qwest nor I  
15       have ever suggested that the Commission should accept Qwest's evidence of PCS-  
16       based data because the FCC accepted BellSouth's PCS data. The fact that  
17       BellSouth did not meet the FCC's burden of proof in no way invalidates the FCC's  
18       plainly stated standards for PCS evidence. Qwest explained in its Comments what  
19       those standards were, and presented evidence, including my affidavit, in order to  
20       satisfy that standard. The only relevant question here is whether the Cricket

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<sup>23</sup> See Ripperger Test. at 36:18-40:16.

<sup>24</sup> *Id.* at 36:8-13.

1 evidence submitted by Qwest satisfies the FCC's stated standard for such a showing.

2

3 Q. MR. RIPPERGER AND MS. ROTH CLAIM THAT QWEST HAS NOT  
4 PROVIDED SUFFICIENT EVIDENCE OF COMPETITION FROM  
5 CRICKET. HAS QWEST DEMONSTRATED THAT RESIDENTIAL  
6 CUSTOMERS ARE PURCHASING PCS SERVICE AS A SUBSTITUTE  
7 FOR WIRELINE SERVICE IN NEW MEXICO?

8 A. Yes. In my Affidavit of October 5, 2001, I presented multiple sources of evidence  
9 indicating that at least a non-*de minimis* number of residential customers in New  
10 Mexico were purchasing Cricket as a substitute for wireline service. That evidence  
11 included:

- 12 • Information from the Cricket website, www.cricketcommunications.com,  
13 showing that the Cricket service was currently being offered in Albuquerque  
14 and Santa Fe for a flat rate of \$29.95 per month, with unlimited local calling  
15 within the Cricket local calling area and long distance calls priced at \$0.08  
16 per minute.<sup>25</sup>
- 17 • Statements from the company discussing Leap's strategy of encouraging  
18 customers to replace their wireline service with Cricket.<sup>26</sup>
- 19 • An *Albuquerque Journal* article in which John Clark, Cricket's New Mexico  
20 general manager, discussed the introduction of Cricket in New Mexico and  
21 stated that the company estimated that over seven percent of its customers  
22 had abandoned their home telephone lines in other markets.<sup>27</sup>
- 23 • Another *Albuquerque Journal* article containing statements from two New  
24 Mexico residents that they had replaced their wireline service with wireless  
25 service.<sup>28</sup>

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<sup>25</sup> See Badal Affidavit, Attachment C.

<sup>26</sup> See *id.*, Attachment D.

<sup>27</sup> See *id.*, Attachment E.

<sup>28</sup> See *id.*, Attachment F.

- 1 • A portion of the FCC's Sixth Annual Report on the State of Competition in  
2 the Wireless Industry discussing Cricket.<sup>29</sup> The FCC's findings are  
3 discussed in greater detail below.
- 4 • A study by IDC cited by the FCC, in which 12% of PCS customers said that  
5 they had purchased a wireless phone instead of an additional home telephone  
6 line.<sup>30</sup>
- 7 • Transcripts of two Cricket television ads that ran in Albuquerque in  
8 September 2001 in which the wireless service is being marketed as a  
9 replacement for wireline service.<sup>31</sup>

10  
11 In my Direct Testimony of November 16, 2001, I supplemented the evidence  
12 contained in my Affidavit with:

- 13 • A Cricket direct mailer mailed to New Mexico residents that promoted  
14 Cricket as a strong alternative to wireline service.<sup>32</sup>
- 15 • Affidavits from three Cricket customers in New Mexico who acknowledged  
16 that they had purchased Cricket as a replacement for home telephone lines.  
17 Those affidavits are discussed in greater detail below.<sup>33</sup>

18  
19  
20 **Q. WHAT HAS THE FCC SAID ABOUT CRICKET SERVICE?**

21 **A.** The FCC discussed Cricket in detail in its Sixth Annual Report on the State of  
22 Competition in the Wireless Industry.<sup>34</sup> In that Report, the FCC recognized Cricket  
23 as the paradigmatic example of a wireless service that is intentionally structured as a

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<sup>29</sup> See *id.*, Attachment G.

<sup>30</sup> See *id.*, Attachment H.

<sup>31</sup> See *id.*, Attachment I.

<sup>32</sup> Badal Direct Test., Exhibit JWB-2.

<sup>33</sup> See *id.*, Exhibit JWB-3.

<sup>34</sup> Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, FCC 01-192 (July 17, 2001) at 33-34 ("Sixth Wireless Report").



1 competitive replacement for wireline service.<sup>35</sup> The Report also found that 7% of  
2 Cricket customers had dropped their home telephone lines completely, while 60% of  
3 Cricket customers used Cricket as their primary phone.<sup>36</sup>  
4

5 Q. DO MR. RIPPERGER OR MS. ROTH RESPOND TO THE FCC'S  
6 DISCUSSION OF CRICKET?

7 A. No. Neither witness has attempted to contradict the FCC's findings with respect to  
8 Cricket.  
9

10 Q. MR. RIPPERGER AND MS. ROTH ARGUE THAT QWEST HAS NOT  
11 PROVIDED ANY STUDIES AT ALL SHOWING THAT CRICKET IS  
12 BEING PURCHASED AS A SUBSTITUTE FOR QWEST RESIDENTIAL  
13 WIRELINE IN NEW MEXICO. WOULD YOU COMMENT?

14 A. In response to the data request submitted by the Advocacy Staff and AT&T, Qwest  
15 submitted estimates of both Cricket's total number of customers in Albuquerque and  
16 Santa Fe and how many of those customers have entirely replaced their wireline  
17 service with Cricket.<sup>37</sup> Using the total number of potential customers in those cities,  
18 multiplied by Cricket's typical first-year penetration rate of 6-7%, Qwest estimated

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See Qwest's Objections and Responses to Staff's Fourth Set of Interrogatories and Request for Production of Documents to Qwest, *In the Matter of Qwest Corporation's Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process*, Utility Case No. 3269 (Nov. 19, 2001), request 009; Qwest's Objections and Responses to AT&T's First Set of Track A Discovery Requests and Requests for Production of Documents to Qwest, *In the Matter of Qwest Corporation's Section 271*

1 a total of 51,695 Cricket customers for the region. Additionally, using the number  
2 of potential customers in each city, again multiplied by Cricket's typical first year  
3 penetration rate of 6-7%, Qwest estimates that Cricket currently serves 38,805 -  
4 45,273 customers in Albuquerque and 5,504-6,422 customers in Santa Fe. As  
5 noted above, Cricket itself reports and that the FCC has acknowledged that  
6 approximately 7% of Cricket customers have abandoned their residential telephone  
7 lines. Multiplying that 7% substitution rate by the estimates of Cricket customers  
8 discussed above yields an estimate of 2,716 to 3,169 Cricket customers in  
9 Albuquerque and 385 to 450 Cricket customers in Santa Fe who have entirely  
10 replaced their residential wireline service with PCS service. It should be noted that  
11 these estimates seriously undercount the total number of Cricket customers who  
12 have used Cricket as a substitute for wireline service because they only include  
13 customers who have disconnected *all* residential wireline service, and do not include  
14 those customers that have replaced or foregone a second line, or who have never  
15 established wireline service at a residential location in the first place.

16  
17 Moreover, Qwest has provided an extremely conservative estimate of Cricket's total  
18 New Mexico customer base that has yet to be challenged. Prior to December 3,  
19 2001, Cricket was assigned 60,000 telephone numbers in Albuquerque. On  
20 December 3, 2001 Cricket received an additional 30,000 telephone numbers in

1 Albuquerque. FCC rules require a provider to reach 60% utilization and be at 6  
2 months to exhaust of existing telephone numbers, prior to acquiring additional  
3 telephone numbers within any given rate center. Therefore, using the FCC  
4 utilization requirement of 60% and Cricket's 60,000 Albuquerque telephone  
5 numbers prior to December 3, 2001, Qwest was able to estimate that Cricket has at  
6 least 36,000 customers in the state of New Mexico. Multiplying that estimate by the  
7 7% substitution rate discussion above yields an estimate of 2,520 Cricket customers  
8 in Albuquerque who have entirely replaced their residential wireline service with  
9 PCS service.

10  
11 When viewed in combination with the evidence included in my Affidavit and Direct  
12 Testimony, the estimates described above strongly suggest that a more than *de*  
13 *minimis* number of residential customers in New Mexico are purchasing Cricket's  
14 service as a substitute for residential wireline service. Cricket is thus providing  
15 residential competition for Qwest and Qwest has satisfied Track A.

16  
17 **Q. PLEASE COMMENT ON MR. RIPPERGER'S ARGUMENT THAT THE**  
18 **7% SUBSTITUTION FIGURE CITED BY QWEST IS UNRELIABLE.**

19 **A.** Mr. Ripperger and Ms. Roth are critical of Leap's own calculation that  
20 approximately 7% of its Cricket customers report cutting their residential wireline

1 service completely after purchasing a Cricket phone.<sup>38</sup> While it is true that the 7%  
2 estimate is not specific to New Mexico, neither Mr. Ripperger nor Ms. Roth have  
3 offered any evidence that the Cricket customers in New Mexico market are  
4 significantly different from Cricket customers in other parts of the country. On the  
5 contrary, Cricket's General Manager for New Mexico cited the same 7%  
6 substitution figure while discussing the introduction of Cricket service in the state.<sup>39</sup>  
7 Mr. Ripperger and Ms. Roth also fail to mention that the FCC itself approvingly  
8 cited the 7% substitution figure in its Sixth Annual Report on the State of  
9 Competition in the Wireless Industry, strong evidence of the validity of the  
10 estimate.<sup>40</sup>

11  
12 **Q. DO YOU AGREE WITH MS. ROTH'S ARGUMENT THAT CUSTOMERS**  
13 **"CUTTING THEIR HOME PHONE SERVICES" DOES NOT MEAN THAT**  
14 **THEY ARE USING CRICKET AS A SUBSTITUTE FOR WIRELINE**  
15 **SERVICE?**

16 **A.** No. Ms. Roth suggests on page 9 of her testimony that "'cutting their home phone  
17 services' could mean any number of things, from discontinuing voice mail or other  
18 vertical services to foregoing a second line."<sup>41</sup> Yet the very activities Ms. Roth  
19 suggests involve using Cricket as a substitute for wireline service. If Cricket  
20 customers are "foregoing a second line" by purchasing a Cricket phone as she

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<sup>38</sup> See Ripperger Test. at 45:16-46:13; Roth Test. at 9:5-10:2.  
<sup>39</sup> See Badal Affidavit, Attachment E.

1 suggests, they are replacing a land line with PCS.

2

3 Q. ON PAGE 44, MR. RIPPERGER STATES THAT NEWSPAPER ARTICLES  
4 THAT DEMONSTRATE CONSUMERS ARE INCREASINGLY  
5 REPLACING WIRELINE SERVICES WITH WIRELESS SERVICES ARE  
6 "JOURNALISTIC INTERPRETATIONS OF THE EFFECT OF WIRELESS  
7 SERVICE ON WIRELINE USAGE." WOULD YOU COMMENT?

8 A. Mr. Ripperger's statement refers to the *Albuquerque Journal* article that I included  
9 in my previously filed direct testimony entitled "The Freedom Phone." While Mr.  
10 Ripperger correctly points out that newspaper articles are journalistic  
11 interpretations, he omits several quotes included in the articles from actual  
12 consumers, Gail Hilliard and Penelope Cisneros, who have "gone totally wireless"  
13 and clearly demonstrate that traditional wireline service is being replaced with  
14 wireless.

15

16 Q. ON PAGE 46, MR. RIPPERGER EXPRESSES DOUBT ABOUT THE  
17 "VALUE AND EXTENT" OF THE THREE AFFIDAVITS FROM  
18 CURRENT CRICKET CUSTOMERS WHO STATE THAT THEY ARE  
19 USING THEIR CRICKET LOCAL WIRELESS SERVICE AS A  
20 SUBSTITUTE FOR TRADITIONAL WIRELINE SERVICE. WOULD YOU

---

<sup>40</sup> See Sixth Wireless Report at 33-34.

<sup>41</sup> See Roth Test. at 9:15-16.

1           **COMMENT ON MR. RIPPERGER'S RESPONSE?**

2    A.    Mr. Ripperger claims that only one of the three affidavits stated that the consumers  
3           use Cricket as a substitute for a Qwest landline, yet he has failed to even identify  
4           which of the affidavits is deficient. In fact, the affidavits clearly state that Cricket's  
5           wireless service was purchased as an alternative to traditional wireline service. Ms.  
6           Walden stated in her affidavit that she purchased Cricket "as an alternative to  
7           additional landline telephone service . . . ."<sup>42</sup> Ms. Campbell stated that she got a  
8           Cricket phone "as an alternative to traditional landline telephone service" and that  
9           she currently has "no landline service in [her] apartment."<sup>43</sup> Finally, Ms. Gallegos  
10          stated that she "terminated [her] landline service" after purchasing her Cricket  
11          phone and has "no intention of purchasing landlines service at this time."<sup>44</sup> These  
12          affidavits plainly show that at least some actual customers in New Mexico are  
13          replacing their wireline service with Cricket's PCS service, a fact that Mr. Ripperger  
14          cannot dispute.

15  
16    Q.    **PLEASE COMMENT ON MR. RIPPERGER'S AND MS. ROTH'S**  
17           **SUGGESTION THAT CRICKET PCS SERVICE IS NOT AN ATTRACTIVE**  
18           **SUBSTITUTE FOR WIRELINE SERVICE.**

19    A.    Mr. Ripperger and Ms. Roth suggest that customers would be unlikely to purchase a  
20           Cricket phone instead of wireline service because of technical differences and the

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<sup>42</sup> See Affidavit of Nancy Walden (Nov. 15, 2001), attached to Direct Testimony of John Badal.

<sup>43</sup> See Affidavit of Alyssa Campbell (Nov. 15, 2001), attached to Direct Testimony of John Badal.

1 fact it is priced higher than residential wireline service.<sup>45</sup> Both witnesses, however,  
2 ignore the advantages that wireless service offers over wireline service, including,  
3 most obviously, portability. As the FCC explicitly recognized in the *Second*  
4 *BellSouth Louisiana Order*, “customers may be willing to pay a premium for PCS  
5 service in light of the benefits of mobility.”<sup>46</sup> More importantly, the compatibility  
6 of the features is not legally relevant — the FCC has acknowledged that broadband  
7 PCS service is “functionally equivalent” to wireline service “even though there may  
8 not be complete identity in technical configuration, service characteristics, or  
9 charges for service . . . .”<sup>47</sup>

10  
11 The best argument on why Cricket is an attractive alternative to wireline service  
12 may come from Cricket itself. The following graphic is an excerpt of a Cricket  
13 direct mailer, first submitted in my previously filed direct testimony, and shows why  
14 Cricket’s local service offering is an attractive substitute for wireline service:

15  
16 **Don't get another phone line. Get Cricket!**

Another home phone	Cricket wireless phone
• Expensive installation charges – Up to \$75	• No installation charges!
• Wait around for the installer. Will they show up?	• Pick up your new phone at your convenience!

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<sup>44</sup> See Affidavit of Stephanie Gallegos (Nov. 15, 2001), attached to Direct Testimony of John Badal.

<sup>45</sup> See Ripperger Test. at 40:20-42:2; Roth Test. at 10:16-21.

<sup>46</sup> *Second BellSouth Louisiana Order* ¶ 32.

<sup>47</sup> *Id.* ¶ 29 (1998).

• High monthly bill	• One low price - \$29.95 for all local calls
• Unpredictable charges	• You pay the same low price every month
• Hard-wired to the house	• Take Cricket with you all around town!

1  
2 Mr. Ripperger also makes an apples to oranges comparisons concerning Cricket's  
3 local service: Cricket's availability and features vs. other PCS offerings. Mr.  
4 Ripperger repeatedly fails to recognize that Cricket is not positioning its local  
5 service offering against other PCS providers. As the advertisement quoted above  
6 demonstrates, Cricket is clearly marketing its local service as a replacement for  
7 traditional wireline service. Therefore, one would expect Cricket's offering to look  
8 much less like the offerings of other PCS providers and more like a traditional  
9 wireline offering. In fact, the following graphic clearly demonstrates that the  
10 general similarities between Cricket's local service offering and traditional wireline  
11 clearly outweigh the differences, as identified by Mr. Ripperger.

12  
13 **Who is Cricket competing against?**

<b>Qwest Wireline Residential Service</b>	<b>Cricket Wireless Local Service</b>
• Fixed monthly rate	• Fixed monthly rate
• Unlimited local calling minutes	• Unlimited local calling minutes
• Limited local calling area	• Limited local calling area
• Long distance service at a per minute rate	• Long distance service at a per minute rate
• A la carte optional features	• A la carte optional features
• No charge for incoming calls	• No charge for incoming calls



1 Q. IS LEAP STILL ADDING NEW CRICKET CUSTOMERS IN ITS SERVICE  
2 REGIONS?

3 A. Yes. Reviewing Mr. Ripperger's assessment of Cricket's local service offering and  
4 marketing efforts, one might conclude that Cricket will never achieve any success  
5 because consumers have no reason to purchase the service. In fact, Cricket has  
6 actually been quite successful overall — Leap Wireless recently announced that it  
7 added approximately 394,000 new Cricket customers during the fourth quarter of  
8 2001, a 54% increase in that quarter alone, and ended the year with more than 1.1  
9 million customers in total.<sup>48</sup> Contrary to Mr. Ripperger's pessimistic outlook for  
10 wireless replacement of wireline service, clearly the FCC understands that wireless  
11 replacement of traditional wireline service is at the early stage of what will likely be  
12 a steady migration away from wireline service.<sup>49</sup>

13  
14 Q. AT PAGE 47, MR. RIPPERBERGER ARGUES THAT CRICKET'S LOCAL  
15 SERVICE OFFERING IS BEING USED BY FORMER QWEST  
16 CUSTOMERS WHO NO LONGER QUALIFY FOR QWEST'S  
17 RESIDENTIAL SERVICE DUE TO PRIOR CREDIT PROBLEMS. WOULD  
18 YOU COMMENT?

19 A. It is Qwest's position that Cricket's local service offering is being used by former  
20 Qwest customers regardless of whether or not they had ever experienced any credit

---

<sup>48</sup> See Press Release, "Leap's Cricket Customers Grow Five-Fold in 2001 to More Than 1.1 Million," (January 8, 2002), available at <http://www.leapwireless.com/press/content/2002/010802.html> (see Attachment

1 problems. As I noted above, Leap has recently announced that it added almost  
2 400,000 new customers in all of its states in the last quarter of 2001 alone. That  
3 rapid growth suggests that Cricket is attractive to all customers, not just those with  
4 credit problems.

5  
6 Moreover, even if Mr. Ripperger's facts were right, they would be irrelevant as a  
7 matter of law. Nothing in the 1996 Act, the legislative history, or the FCC's orders  
8 requires a CLEC to serve exactly the same customers served by the BOC.  
9 Therefore, regardless of which customers are purchasing Cricket, as long as Leap is  
10 serving residential customers in New Mexico it is providing competition to Qwest  
11 under Track A. In fact, while I do not believe he intended to do so, the situation that  
12 Mr. Ripperger describes is quite simply competition for residential local exchange  
13 service. In Mr. Ripperger's example, a customer with credit problems is required to  
14 seek an alternative local service provider and ends up purchasing a Cricket phone.  
15 Alternatively, the customer might be seeking mobility or an affordable and  
16 convenient way to stay in touch with a teenage child. In either case, what Mr.  
17 Ripperger is describing is a viable alternative to wireline local exchange service. If  
18 Mr. Ripperger believes that Cricket could be a full substitute for Qwest for high risk  
19 customers, he is tacitly conceding that Cricket is competitive alternative to Qwest.

---

3).  
<sup>49</sup> See Sixth Wireless Report at 33-34.

IV. SHARED TENANT SERVICES

Q. AT PAGE 32 OF HIS TESTIMONY, MR. RIPPERGER CONTENDS THAT, BECAUSE CLEC-OWNED PBX SYSTEMS SERVING RESIDENTIAL APARTMENT BUILDINGS MUST SUBSCRIBE TO BUSINESS PBX TRUNKS, THAT ARRANGEMENT SHOULD NOT QUALIFY AS RESIDENTIAL LOCAL EXCHANGE COMPETITION IN NEW MEXICO. IS HE CORRECT?

A. No. Mr. Ripperger's conclusions are confusing and incorrect. From Qwest's perspective, absent the presence of the CLEC-owned PBX system in an apartment building, it is likely that many of the apartment residents would subscribe to Qwest local exchange residential service. The loss of residential customers to a PBX "shared tenant" arrangements clearly represents the loss of customers to a facilities-based provider.

Q. IS IT POSSIBLE THAT CLEC RESPONDENTS TO THE COMMISSION'S SURVEY REGARDING COMPETITION, LIKE MR. RIPPERBERGER, HAVE EXCLUDED APARTMENT BUILDINGS SERVED VIA PBX SYSTEMS FROM THE RESIDENTIAL LOCAL EXCHANGE MARKET? IF SO, WHAT ARE THE POTENTIAL IMPACTS TO THE RESULTS OF THE SURVEY?

1     A.     Yes. It is possible that CLECs internally classify apartment buildings served via  
2     PBX systems as business customers, as Mr. Ripperberger argues they should. If  
3     CLECs that serve apartment buildings via PBX systems and define these customers  
4     as business customers respond to the survey according to their internal  
5     classifications, the survey results would likely understate the number of residential  
6     customers, the residents of the apartment buildings, being served via CLEC facility-  
7     based networks. For example a CLEC that serves several apartment buildings via  
8     PBX systems and that classifies these apartments as business customers, when asked  
9     the survey question, "How many residential customers do you serve via facility-  
10    based networks?", the CLEC could respond simply "none." A response of this  
11    nature, while technically correct, would certainly understate the level of residential  
12    facility-based competition presently in the state.

13

14                   **V.     CONCLUSIONS AND RECOMMENDATIONS**

15

16    **Q.     PLEASE SUMMARIZE YOUR TESTIMONY.**

17    A.     The FCC has recognized that broadband PCS providers such as Leap can serve as  
18    "competing providers" for the purposes of Track A if customers are replacing their  
19    wireline service with the PCS service. The evidence provided in my October 5,  
20    2001 Affidavit and my November 16, 2001 Direct Testimony shows that residential  
21    customers in New Mexico are, in fact, purchasing Leap Wireless's Cricket service  
22    as a replacement for wireline service, and neither of the opposing witnesses in this

1 proceeding have sufficiently rebutted that evidence. Therefore, Qwest has  
2 demonstrated the existence of both business and residential local exchange  
3 competition, and thus fully satisfied the requirements of Track A.

4

5 **Q. WHAT DO YOU RECOMMEND TO THE COMMISSION?**

6 A. In view of the evidence Qwest has presented throughout this proceeding, I  
7 respectfully recommend that the Commission find the existence of local exchange  
8 competition for the residential customers in New Mexico, and therefore, Qwest has  
9 fully satisfied Track A requirements in this state.

10

11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

12 A. Yes.

13

**INDEX OF ATTACHMENTS**

**SUBJECT**

**ATTACHMENT  
NUMBER**

Qwest's Objections and Responses to Staff's Fourth Set of Interrogatories and Request for Production of Documents to Qwest (Nov. 19, 2001) request 009; Qwest's Objections and Responses to AT&T's First Set of Track A Discovery Requests and Requests for Production of Documents to Qwest (Nov. 28, 2001), requests 007 - 008

Attachment 1

Press Release, "Leap's Cricket Customers Grow Five-Fold in 2001 to More Than 1.1 Million," (January 8, 2002)

Attachment 2



## Leap's Cricket Customers Grow Five-Fold in 2001 to More Than 1.1 Million

*- Cricket Customer Base Grows Almost 400,000 in Fourth Quarter -*

SAN DIEGO - Jan. 8, 2002 - Leap Wireless International, Inc. (Nasdaq: LWIN), an innovator of wireless communications services, today announced that it ended fiscal year 2001 with 1.119 million Cricket customers, meeting the company's guidance of at least 1.1 million customers. Leap currently offers Cricket, its unlimited local wireless service, in 39 markets in 20 states stretching from New York to California. Leap grew its customer base by 54 percent in the fourth quarter, up from more than 724,000 customers as of Sept. 30, 2001. Net additions were more than 394,000 - an all-time high for the company.

"Despite an uncertain economy, the demand for the Cricket service and its value and predictability has remained strong. We think Cricket service and its customer growth both this quarter and this year prove that our innovative, value-focused business model succeeds in adding customers more quickly than almost anyone else in the wireless industry," said Harvey P. White, chairman and CEO of Leap. "We are proud of accomplishing the five-fold increase in our customer base while successfully expanding our business on a national scale during the year. We look forward to moving ahead with our plans to launch our 40th market - Buffalo, N.Y. - in the first quarter of this year and expect to end 2002 with approximately two million Cricket customers."

"We have built a strong organization led by an experienced, proven management team," said Susan G. Swenson, Leap's president and chief operating officer. "In addition to operating our existing markets, our team launched 29 new markets in a single year with 14 of them being launched in the fourth quarter - a true accomplishment. With nearly 1,800 employees, our team ended the year with 27 switches and approximately 2,200 cell sites, 100 Cricket retail locations and 5,000 indirect retail locations across the country. As our company continues the to fully transition from launch to operational mode, we look forward to continuing to grow our business prudently and cost-effectively as we deliver innovative, affordable wireless services to the mass consumer market."

Leap expects to report other results and to provide guidance for 2002 during its fourth quarter conference call on Feb. 11, 2002. Further details on the conference call will be provided at a later date.

### About Leap

Leap, headquartered in San Diego, Calif., is a customer-focused company providing innovative communications services for the mass market. Leap pioneered the Cricket Comfortable Wireless service



that lets customers make all their local calls from within their local calling area and receive calls from anywhere for one low, flat rate. Leap has begun offering new services designed to further transform wireless communications for consumers. For more information, please visit [www.leapwireless.com](http://www.leapwireless.com).

###

Except for the historical information contained herein, this news release contains "forward-looking statements" reflecting management's current forecast of certain aspects of Leap's future. Some forward-looking statements can be identified by forward-looking words such as "believe," "think," "may," "could," "will," "estimate," "continue," "anticipate," "intend," "seek," "plan," "expect," "should," "would" and similar expressions. This news release is based on current information, which we have assessed but which by its nature is dynamic and subject to rapid and even abrupt changes. Our actual results could differ materially from those stated or implied by such forward-looking statements due to risks and uncertainties associated with our business. Factors that could cause actual results to differ include, but are not limited to: changes in the economic conditions of the various markets our subsidiaries serve which could adversely affect the market for wireless services; our ability to access capital markets; a failure to meet the operational, financial or other covenants contained in our credit facilities; our ability to rollout networks in accordance with our plans, including receiving equipment and backhaul and interconnection facilities on schedule from third parties; failure of network systems to perform according to expectations; the effect of competition; the acceptance of our product offering by our target customers; our ability to retain customers; our ability to maintain our cost, market penetration and pricing structure in the face of competition; technological challenges in developing wireless information services and customer acceptance of such services if developed; our ability to integrate the businesses and technologies we acquire; rulings by courts or the FCC adversely affecting our rights to own and/or operate certain wireless licenses; the impacts on the global and domestic economies and the financial markets of recent terrorist activities, the ensuing declaration of war on terrorism and the continued threat of terrorist activity and other acts of war or hostility; and other factors detailed in the section entitled "Risk Factors" included in our Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2001 and in our other SEC filings. The forward-looking statements should be considered in the context of these risk factors. Investors and prospective investors are cautioned not to place undue reliance on such forward-looking statements. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

Leap and the Leap logo design are trademarks of Leap Wireless International, Inc. Cricket and Comfortable Wireless are registered trademarks of Cricket Communications, Inc.

###

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New Mexico  
Utility Case No. 3269  
STF 04-009

INTERVENOR: New Mexico State Corporation Commission Staff

REQUEST NO: 009

How many customers does Cricket have in New Mexico?

RESPONSE:

While the exact number of Cricket's New Mexico customers is clearly proprietary and not available to Qwest, Qwest can provide a range of estimates based on separate and publicly available information as follows:

Estimate 1. - Data Source: Leap Wireless International, Inc. (Cricket's parent company) 3rd Fiscal Quarter 2001 Earnings press release. Web site link: <http://www.leapwireless.com/dindex.html>

- The Albuquerque and Santa Fe metro areas contain 739,502 covered Potential Customers ("POPs").
- Cricket's typical first-year penetration rate is equal to 6% to 7% of the covered POPs.
- Multiplying covered POPs by first-year penetration rates yields: At 6%: 44,310,  
At 7%: 51,695

Estimate 2. - Data Source: Local Exchange Routing Guide (LERG), FCC requirements necessary to acquire additional prefixes.

• According to the LERG Cricket currently has six prefixes in the Albuquerque and three prefixes in the Santa Fe metro areas and is scheduled to receive two additional prefixes in the Albuquerque metro area on December 3, 2001. Because each prefix has 10,000 telephone numbers, Cricket currently has 60,000 telephone numbers assigned to it in Albuquerque metro area and 30,000 assigned to it in Santa Fe.

• FCC rules require a provider to reach 60% utilization and be at 6 months to exhaust of existing telephone numbers, prior to acquiring additional telephone numbers within any given rate center. Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, Numbering Resource Optimization, Petition for Declaratory Ruling and Request For Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, 16 FCC Rcd 306 (2000). Report and Order and Further Notice of Proposed Rulemaking, Numbering Resource Optimization, 15 FCC Rcd 7574 (2000).

• Multiplying the required utilization rate by the number of current Albuquerque telephone numbers yields: 36,000 customers.

New Mexico  
Utility Case No. 3269  
AT&T 01-007

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 007

a) How many customers does Cricket have in the greater Albuquerque area at present? b) How many of those customers have retained their local exchange service with Qwest? c) How many of those customers have replaced their Qwest local exchange service with the wireless service offered by Cricket?

RESPONSE:

a) Qwest objects to this Request because it seeks information that violates the confidentiality rights of third parties and is highly confidential, proprietary, and competitively sensitive. Subject to and without waiving the objection, Qwest states:

Unknown. However, using publicly available information, Qwest has prepared an estimate of the total number of Cricket's Albuquerque customers. See Leap Wireless International, Inc. 3rd Fiscal Quarter 2001 Earnings press release (available at <<http://www.leapwireless.com/dindex.html>>).

- The Albuquerque metro area contains 646,759 covered potential customers (POPs).
- Leap Wireless (Cricket's parent company) reports that Cricket's typical first-year penetration rate in a new market is equal to 6% to 7% of the covered POPs.

Multiplying covered POPs by first-year penetration rates yields: At 6%  
38,805                      At 7% 45,273

Qwest can reasonably estimate that Cricket serves between 38,000 and 45,000 customers in the Albuquerque metro area.

b) Qwest objects to this Request because it seeks information that violates the confidentiality rights of third parties and is highly confidential, proprietary, and competitively sensitive. Subject to and without waiving the objection, Qwest states:

Unknown. Qwest does not track the number of Cricket's customers who have retained their local exchange service with Qwest.

c) Qwest objects to this Request because it seeks information that violates the confidentiality rights of third parties, and is highly confidential,

Because Cricket has not requested additional prefixes for the Santa Fe area, it is not appropriate to apply the 60% utilization requirement to Cricket's Santa Fe metro area telephone numbers. Therefore, the estimate of 36,000 Albuquerque metro area customers can conservatively be considered the low estimate.

Based the above methodologies, Qwest can reasonably estimate that Cricket currently serves between 36,000 and 51,695 customers in New Mexico.

proprietary, and competitively sensitive. Qwest notes further that counting only those pre-existing customers who have actually disconnected all of their landline local exchange service seriously underestimates the extent to which New Mexico customers are substituting Cricket wireless service for Qwest landline services. Subject to and without waiving the objection, Qwest states:

Unknown. Qwest does not track the number of Cricket wireless customers who have disconnected their Qwest local exchange service. However, using the publicly available information laid out in subpart (a), together with additional information from Leap Wireless that has been reported in the Federal Communications Commission's Sixth Annual Report on the State of Competition in the Wireless Industry (available at <[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-01-192A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-01-192A1.pdf)>), Qwest has prepared the following estimates of the number of Cricket customers who are using Cricket to substitute one or more residential wirelines from Qwest. The FCC cites Leap Wireless's own public statements reporting that 60% of Cricket customers use their wireless phones as their primary phone, about 50% view their Cricket service as a replacement of a first and/or second wireline, and 7% of Cricket's customers in Cricket's most established markets have dropped their wireline home phones altogether. Cricket's New Mexico General Manager has reported that Cricket expects the same 7% total disconnection figure in New Mexico. See Carolyn Appelman, "Firm Offers Phone Service for One Price," Albuquerque Journal, Feb. 22, 2001 at 3. Applying this data to the above estimates of Cricket's total number of Albuquerque customers yields the following estimates:

- Estimate of the number of Cricket's Albuquerque customers who have disconnected all residential wireline service: 2,716 to 3,169

Because this figure counts only those preexisting wireline customers who have disconnected all wireline service, it does not include customers who have retained their primary landline but disconnected or foregone a second landline in favor of a Cricket phone, nor does it include customers who established their initial service with Cricket and hence never became a Qwest wireline customer. Thus, this number seriously undercounts the extent of wireless substitution occurring in Albuquerque.

Respondent: Michael Horcasitas, Staff Advocate, Policy & Law

New Mexico  
Utility Case No. 3269  
AT&T 01-008

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 008

a) How many customers does Cricket have in the greater Santa Fe area at present? b) How many of those customers have retained their local exchange service with Qwest? c) How many of those customers have replaced their Qwest local exchange service with the wireless service offered by Cricket?

RESPONSE:

a) Qwest objects to this Request because it seeks information that violates the confidentiality rights of third parties and is highly confidential, proprietary, and competitively sensitive. Subject to and without waiving the objection, Qwest states:

Unknown. However, using publicly available information, Qwest has prepared an estimate of the total number of Cricket's Santa Fe customers. See Leap Wireless International, Inc. 3rd Fiscal Quarter 2001 Earnings press release (available at <<http://www.leapwireless.com/dindex.html>>).

- The Santa Fe metro area contains 646,759 covered potential customers (POPs).
- Leap Wireless (Cricket's parent company) reports that Cricket's typical first-year penetration rate in a new market is equal to 6% to 7% of the covered POPs.

Multiplying covered POPs by first-year penetration rates yields: At 6%  
5,504 At 7% 6,422

Qwest can reasonably estimate that Cricket serves between 5,000 and 6,000 customers in the Santa Fe metro area.

b) Qwest objects to this Request because it seeks information that violates the confidentiality rights of third parties and is highly confidential, proprietary, and competitively sensitive. Subject to and without waiving the objection, Qwest states:

Unknown. Qwest does not track the number of Cricket's customers who have retained their local exchange service with Qwest.

c) Qwest objects to this Request because it seeks information that violates the confidentiality rights of third parties, and is highly confidential, proprietary, and competitively sensitive. Qwest notes further that counting

only those pre-existing customers who have actually disconnected all of their landline local exchange service seriously underestimates the extent to which New Mexico customers are substituting Cricket wireless service for Qwest landline services. Subject to and without waiving the objection, Qwest states:

Unknown. Qwest does not track the number of Cricket wireless customers who have disconnected their Qwest local exchange service. However, using the publicly available information laid out in subpart (a), together with additional information from Leap Wireless that has been reported in the Federal Communications Commission's Sixth Annual Report on the State of Competition in the Wireless Industry (available at <[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-01-192A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-01-192A1.pdf)>), Qwest has prepared the following estimates of the number of Cricket customers who are using Cricket to substitute one or more residential wirelines from Qwest. The FCC cites Leap Wireless's own public statements reporting that 60% of Cricket customers use their wireless phones as their primary phone, about 50% view their Cricket service as a replacement of a first and/or second wireline, and 7% of Cricket's customers in Cricket's most established markets have dropped their wireline home phones altogether. Cricket's New Mexico General Manager has reported that Cricket expects the same 7% total disconnection figure in New Mexico. See Carolyn Appelman, "Firm Offers Phone Service for One Price," Albuquerque Journal, Feb. 22, 2001 at 3. Applying this data to the above estimates of Cricket's total number of Santa Fe customers yields the following estimates:

- Estimate of the number of Cricket's Santa Fe customers who have disconnected all residential wireline service: 385 to 450

Because this figure counts only those preexisting wireline customers who have disconnected all wireline service, it does not include customers who have retained their primary landline but disconnected or foregone a second landline in favor of a Cricket phone, nor does it include customers who established their initial service with Cricket and hence never became a Qwest wireline customer. Thus, this number seriously undercounts the extent of wireless substitution occurring in Santa Fe.

Respondent: Michael Horcasitas, Staff Advocate, Policy & Law

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S  
SECTION 271 APPLICATION AND  
MOTION FOR ALTERNATIVE  
PROCEDURE TO MANAGE THE  
SECTION 271 PROCESS

CASE NO. 3269

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of **TRACK A REBUTTAL TESTIMONY OF JOHN BADAL** to be mailed and/or hand-delivered on January 11, 2002 to the following:

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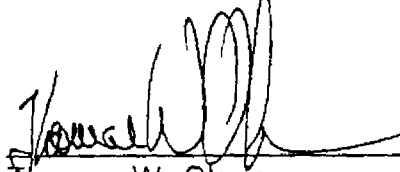
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Thomas W. Olson

\* = hand-delivered

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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IN THE MATTER OF QWEST	)	
CORPORATION'S SECTION 271	)	
APPLICATION AND MOTION FOR	)	UTILITY CASE NO. 3269
ALTERNATIVE PROCEDURE TO	)	
MANAGE THE SECTION 271 PROCESS	)	

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SUPPLEMENTAL  
DIRECT TESTIMONY

OF

DAVID L. TEITZEL

DIRECTOR – PRODUCT AND MARKET ISSUES

QWEST CORPORATION

November 16, 2001

RECEIVED  
NOV 13 4 10 PM '01  
NEW MEXICO  
PUBLIC REGULATION COMMISSION

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**IDENTIFICATION OF WITNESS**

1

2 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND PLACE OF**  
3 **EMPLOYMENT.**

4 A. My name is David L. Teitzel. I am employed by Qwest Corporation ("Qwest"). My  
5 title is Director – Product and Market Issues. My business address is 1600 7<sup>th</sup>  
6 Avenue, Room 2904, Seattle, Washington 98191.  
7

8 **Q. ARE YOU THE SAME DAVID L. TEITZEL WHO FILED DIRECT**  
9 **TESTIMONY IN THIS PROCEEDING ON MARCH 30, 2001 AND**  
10 **REBUTTAL TESTIMONY ON MAY 23, 2001?**

11 A. Yes, I am.  
12

**PURPOSE OF TESTIMONY**

13

14

15 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

16 A. The purpose of my testimony is to discuss and reinforce Qwest's evidence that  
17 Competitive Local Exchange Carriers (CLECs) are providing local exchange  
18 residential services to customers in New Mexico. The procedural order issued by  
19 the Commission on November 6, 2001 in this docket specifically required direct  
20 testimony to be filed regarding this issue. Mr. John Badal is also filing direct  
21 testimony to address other updated competitive information in New Mexico as  
22 required by the order.  
23

24

Section 271(c)(1)(A) of the Telecommunications Act of 1996 requires a BOC to

1 show that “competing providers” are providing “telephone exchange service . . . to  
2 residential and business subscribers.”<sup>1</sup> According to the FCC, a CLEC qualifies as a  
3 “competing provider” as long as it is operational and “serving more than a *de*  
4 *minimis* number of end-users.”<sup>2</sup> The FCC has stated that it “do[es] not read section  
5 271(c)(1)(A) to require that a new entrant serve a specific market share in its service  
6 area to be considered a ‘competing provider.’”<sup>3</sup> In other words, a BOC only need  
7 demonstrate that there are one or more CLECs in the state providing service to  
8 customers in order to satisfy this requirement of Track A; it does not require the  
9 presence of multiple CLECs or that CLECs have achieved any particular share of  
10 the market in the state overall.

11  
12 The FCC has also squarely held — and the New Mexico Public Regulation  
13 Commission has recently acknowledged<sup>4</sup> — that Track A does *not* require a BOC to  
14 prove that competition for residential customers is facilities-based.<sup>5</sup> The FCC has  
15 stated multiple times that resale-based competition for residential customers is

---

<sup>1</sup> 47 U.S.C. § 271(c)(1)(A).

<sup>2</sup> See Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, As Amended, To Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543 ¶¶ 78 (1997) (“*Ameritech Michigan Order*”).

<sup>3</sup> *Id.* at ¶ 77.

<sup>4</sup> See Procedural Order Regarding Track A, *In the Matter of Qwest Corporation's Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process*, Utility Case No. 3269 (Nov. 6, 2001) at 3 (“The Commission recognizes that the FCC allows for the satisfaction of the residential competition component of Track A through a showing of competitors’ service to residential customers entirely via resale . . .”).

<sup>5</sup> See, e.g., Memorandum Opinion and Order, *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Louisiana*, 13 FCC Rcd 20599 ¶ 48 (1998) (“*Second BellSouth Louisiana Order*”) (holding that reading Track A to require a showing of facilities-based residential competition would “produce anomalous results, and there appear to be overriding policy considerations that lead to a contrary construction of the statutory language”); *id.* at ¶ 46 (“The language of section 271(c)(A) [the Track A requirement] appears to stop short of

1 sufficient: “[I]t does not appear to be consistent with congressional intent to  
2 exclude a BOC from the in-region interLATA market solely because the  
3 competitors’ service to residential customers is wholly through resale.”<sup>6</sup> Therefore,  
4 Qwest can satisfy Track A by showing that business customers in New Mexico are  
5 being served by facilities-based competition while residential customers are being  
6 served solely by resale-based competition.

7  
8 The report by Mr. John Antonuk (“Facilitator”) of the Liberty Consulting Group  
9 concerning General Terms and Conditions, Section 272 and Track A, released on  
10 September 21, 2001, concluded that, while all Track A requirements were met with  
11 respect to business services in New Mexico, these requirements were not met with  
12 respect to residential service in New Mexico.<sup>8</sup> The Facilitator concluded that Qwest  
13 had not provided “substantial evidence” of provision of competitive local exchange  
14 service to residential end users.<sup>9</sup> It appears, however, that the Facilitator believed  
15 that Qwest was required to make a specific showing that there is *facilities-based*  
16 competition for residential customers in order to be in compliance with Track A.<sup>10</sup>

17 As noted above, no such showing is required: A BOC can fully satisfy Track A by

---

mandating actual provisioning of competitive facilities-based services independently to both business and residential subscribers.”).

<sup>6</sup> *Second BellSouth Louisiana Order* at ¶ 48; Memorandum Opinion and Order, *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance For Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd 6237 ¶ 43 n.101 (2001).

<sup>7</sup> *See Ameritech Michigan Order* at ¶¶ 62-014; *see also* Facilitator’s Report on Group 5 Issues: General Terms and Conditions, Section 272, and Track A (Sept. 21, 2001) at 71-72 (“Facilitator’s Report”).

<sup>8</sup> *See* Facilitator’s Report at 85.

<sup>9</sup> *Id.* at 85

<sup>10</sup> *Id.* (finding that Qwest’s brief demonstrated that CLECs were engaged in “the provision of *facilities-based* business and residential services . . . in all but two states: [Idaho and New Mexico]” (emphasis added)).

<sup>11</sup> Facilitator’s report, P. 85

1 showing that CLECs are offering facilities-based business competition in  
2 combination with resale-based residential competition. Because the Facilitator  
3 erroneously concluded that Qwest was required to demonstrate the presence of  
4 facilities-based residential competition, he failed to acknowledge Qwest's  
5 un rebutted evidence of resale-based residential local exchange competition in New  
6 Mexico, presented in my direct testimony and in the workshops in this proceeding.<sup>12</sup>  
7 The purpose of this supplemental testimony is to reinforce that evidence and to  
8 demonstrate that the combination of the resale data and the documentation of  
9 facilities-based residential local exchange competition provided by Mr. John Badal  
10 in his affidavit and direct testimony, show that sufficient residential local exchange  
11 competition in New Mexico is present to meet the requirements of Track A.

12  
13 **EVIDENCE OF RESALE-BASED RESIDENTIAL COMPETITION**  
14

15 **Q. WHAT EVIDENCE DID YOU PREVIOUSLY PRESENT OF RESIDENTIAL**  
16 **RESALE-BASED LOCAL EXCHANGE COMPETITION IN THIS**  
17 **PROCEEDING?**

18 **A.** During the June 26, 2001 Multistate workshop, I provided updated competitive data  
19 in response to the parties' request that the most current competitive data available be  
20 submitted for discussion during the workshop. I updated Confidential Exhibit DLT-  
21 2, based upon April 30, 2001 data, to reflect then-current quantities of Unbundled

---

<sup>12</sup> Confidential Exhibit DLT-2 attached to Direct Testimony of David L. Teitzel dated March 30, 2001(testimony is Confidential S7 QWE DLT-7); Confidential S8 QWE DLT-8; Confidential S8 QWE DLT-

1       Loops, Facility-Based Competitive Lines and Resold Lines in service. This updated  
2       exhibit was introduced in the June 26, 2001 workshop on the record as Confidential  
3       S8 QWE DLT-8, and is attached to this testimony as Attachment A. This exhibit  
4       showed that CLECs were purchasing and reselling a total of 3,064 residential local  
5       exchange lines in New Mexico. I also introduced an exhibit during the June 26,  
6       2001 workshop on the record as Confidential S8 QWE DLT-15, showing April  
7       2001 quantities of resold lines in service, by location, CLLI code and service type,  
8       with the actual CLEC name masked to preserve carrier confidentiality. This exhibit  
9       is attached to this testimony as Confidential Attachment B. In addition, I supplied  
10      an updated Confidential Exhibit DLT-1, which reflected CLECs actively purchasing  
11      wholesale services from Qwest in New Mexico as of April 30, 2001. This exhibit  
12      was introduced during the June 26, 2001 workshop on the record as Confidential S8  
13      QWE DLT-10, and is attached to this testimony as Confidential Attachment C. This  
14      exhibit showed a total of five CLECs actively reselling Qwest's residential local  
15      exchange service at that time.

16  
17   **Q.    IS THE DATA IN THE EXHIBITS REFERENCED IN THE PRECEDING**  
18   **ANSWER DEVELOPED THROUGH AN ESTIMATING PROCESS, OR DO**  
19   **THESE DATA REPRESENT ACTUAL RESOLD LINES IN SERVICE?**

20   **A.    This data reflects actual residential resale lines in service, not estimates, and simply**  
21   **consists of reports of wholesale in-service quantities taken from Qwest's wholesale**  
22   **service tracking database, which is updated on a monthly basis. The information**



1 provided reflected actual resold residential access lines in service as of April 2001  
2 as well as the actual CLECs purchasing residential services for resale.

3  
4 **Q. WITH RESPECT TO THE DATA REGARDING THE NUMBER OF**  
5 **RESOLD RESIDENTIAL LINES IN SERVICE AND THE NUMBER OF**  
6 **CLECS RESELLING RESIDENTIAL LOCAL EXCHANGE SERVICE,**  
7 **WERE THESE NUMBERS DISPUTED THROUGH WRITTEN**  
8 **TESTIMONY OR DURING FORMAL WORKSHOPS?**

9 **A.** No. These data were not rebutted and are in the formal record in this proceeding as  
10 discussed above.

11  
12 **Q. IN ITS FOURTH SET OF DATA REQUESTS SERVED ON QWEST ON**  
13 **NOVEMBER 9, 2001 BY THE COMMISSION STAFF, QWEST WAS**  
14 **ASKED TO PROVIDE THE MOST CURRENT DATA AVAILABLE**  
15 **REGARDING RESIDENTIAL RESALE, IF SUCH DATA IS DIFFERENT**  
16 **THAN THE DATA PROVIDED THROUGH THE ABOVE-REFERENCED**  
17 **EXHIBITS DURING THE MULTISTATE PROCEEDINGS. DOES THE**  
18 **MOST CURRENT DATA REFLECT CHANGES IN THE NEW MEXICO**  
19 **CLEC RESALE QUANTITIES, AND WHAT ARE THESE SPECIFIC**  
20 **CHANGES?**

21 **A.** Yes. Confidential Attachment D reflects New Mexico CLECs actively purchasing  
22 wholesale services from Qwest, and shows a total of 9 CLECs reselling residential  
23 local exchange services as of September 30, 2001. This number is an increase from

1 the five residential resale CLECs identified in Confidential Attachment C. In  
2 Confidential Attachment E, the number of resold residential access lines in service  
3 is reported by city and wire center as of September 30, 2001, and reflects a total of  
4 1,829 resold residential lines in service, as compared to total resold residential lines  
5 in service as of April 30, 2001 of 3,064, as shown on Attachment A. While a total  
6 of 9 CLECs are providing resold residential local exchange service in New Mexico,  
7 one CLEC, identified in Confidential Attachment E as "CLEC C" to protect carrier  
8 confidentiality, is reselling almost 1,600 of the resold residential lines in service as  
9 of September 30, 2001.

10  
11 **Q. WHAT DO THESE CHANGES IN THE RESIDENTIAL RESALE**  
12 **NUMBERS SUGGEST?**

13 **A.** These changes show that the competitive local exchange market is dynamic and that  
14 CLECs are continuing to offer resold residential services in New Mexico, even  
15 though the general economy is currently less conducive to access line growth than it  
16 has been in the past. It is noteworthy that the number of CLECs actively reselling  
17 residential services has increased to nine as of September 2001. As noted above, at  
18 least one CLEC is serving almost 1,600 residential access lines via resale; that  
19 CLEC has succeeded in making resale a cornerstone of its residential service  
20 strategy and is plainly serving a significant number of customers. Additionally,  
21 access line "in service" quantities cannot be considered in isolation when assessing  
22 competitive markets, and the net reduction in resold residential access lines may be  
23 an indication of a shift in New Mexico CLEC competitive strategies away from

1 resale in providing services to end users. For example, at Page 4 of his affidavit,  
2 Mr. Badal states that facilities-based CLECs (e.g., those using either CLEC-owned  
3 loops or stand-alone UNE loops purchased from Qwest to provide service to end  
4 users), reported 4,796 residential telephone numbers and 19,144 business telephone  
5 numbers (a total of 23,940) to Intrado, Qwest's third party E911 database  
6 administrator.

## 8 CONCLUSIONS AND RECOMMENDATIONS

9  
10 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

11 A. I have reaffirmed in this testimony that, based on April 30, 2001 information entered  
12 into the formal record in the June 26, 2001 Multistate workshop, that 5 CLECs were  
13 reselling a total of 3,064 residential local exchange lines to end users in New  
14 Mexico. Based on September 2001 information, which is the most current data  
15 available, a total of 9 CLECs are providing nearly 2,000 resold residential exchange  
16 lines in the state. This information clearly shows residential local exchange resale  
17 has been and remains a viable means by which CLECs may serve end users.

18  
19 **Q. WHAT DO YOU RECOMMEND TO THE COMMISSION?**

20 A. Coupled with the competitive information provided in the affidavit of Mr. Badal in  
21 this proceeding, Qwest's evidence shows that CLECs are providing competitive  
22 local exchange services to residential customers in New Mexico in a variety of  
23 ways. As discussed previously in this testimony, Qwest must demonstrate that at

1       least one CLEC is serving a more than de minimis number of residential customers  
2       via either facilities-based *or* resale-based competition. In this proceeding Qwest has  
3       demonstrated that CLECs are providing services through resale and via facilities-  
4       based means. In light of this evidence, I respectfully ask the Commission to find  
5       that local exchange competition is now present in the residential market in New  
6       Mexico, and that Qwest has fully satisfied all Track A requirements in the state.

7  
8       **Q.     DOES THIS CONCLUDE YOUR TESTIMONY?**

9       **A.     Yes, it does.**

10

VERIFICATION

STATE OF WASHINGTON       )  
                                      ) ss.  
COUNTY OF KING            )

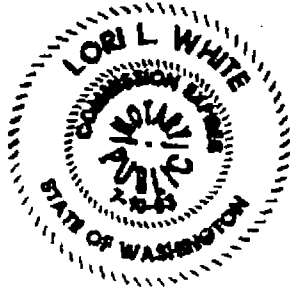
I, David L. Teitzel, being first duly sworn, depose and state that:


1. I prepared the foregoing Supplemental Direct Testimony of David L. Teitzel.
2. The statements and information contained in the testimony are based on my own knowledge and information or on information that I have obtained from sources I believe to be reliable and truthful, and are therefore true, accurate and complete to the best of my knowledge, information and belief.

FURTHER AFFIANT SAYETH NAUGHT.

  
David L. Teitzel

SUBSCRIBED AND SWORN TO before me this 13<sup>th</sup> day of November, 2001.



  
Notary Public  
Seattle, Washington  
Residing In  
My Commission Expires 7/10/03

**INDEX OF ATTACHMENTS**

<b><u>SUBJECT</u></b>	<b><u>ATTACHMENT NUMBER</u></b>
Business and Residential Lines Served by Competitors As of April 30, 2001	Confidential A
New Mexico Resold Lines by Service Type (as of April 30, 2001)	Confidential B
New Mexico Active CLEC Report (as of April 30, 2001)	Confidential C
New Mexico Active CLEC Report (as of September 30, 2001)	Confidential D
New Mexico Residential Resold Lines (as of September 30, 2001)	Confidential E

ATTACHMENT A THROUGH E

**CONFIDENTIAL**

FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER  
ISSUED IN THIS CASE

Case No.: 3269

Qwest Track A  
Partial of Exhibit 3

Deemed Confidential  
Subject to protective order  
In case no. 3269

ORIGINAL  
Sealed and filed  
Not to be checked out!!!



**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

---

IN THE MATTER OF QWEST	)	
CORPORATION'S SECTION 271	)	
APPLICATION AND MOTION FOR	)	UTILITY CASE NO. 3269
ALTERNATIVE PROCEDURE TO	)	
MANAGE THE SECTION 271 PROCESS	)	

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**TRACK A REBUTTAL TESTIMONY**

**OF**

**DAVID L. TEITZEL**

**DIRECTOR – PRODUCT AND MARKET ISSUES**

**QWEST CORPORATION**

**January 11, 2002**

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**I. IDENTIFICATION OF WITNESS**

**Q. PLEASE STATE YOUR NAME, OCCUPATION, AND PLACE OF EMPLOYMENT.**

**A.** My name is David L. Teitzel. I am employed by Qwest Corporation ("Qwest"). My title is Director – Product and Market Issues. My business address is 1600 7<sup>th</sup> Avenue, Room 2904, Seattle, Washington 98191.

**Q. ARE YOU THE SAME DAVID L. TEITZEL WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING ON MARCH 30, 2001, REBUTTAL TESTIMONY ON MAY 23, 2001, AND SUPPLEMENTAL DIRECT TESTIMONY ON NOVEMBER 16, 2001?**

**A.** Yes, I am.

**II. OVERVIEW OF TESTIMONY**

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

**A.** My supplemental rebuttal testimony addresses the issues raised in this proceeding by Mr. Michael S. Ripperger on behalf of the Advocacy Staff of the New Mexico Public Regulation Commission ("Commission") and Ms. Diane Roth on behalf of AT&T. In my testimony, I demonstrate that, contrary to suggestions of these witnesses, Qwest is in compliance with the Track A requirements of section 271 in New Mexico. Because Qwest has already demonstrated the existence of facilities-

1 based competition in the business market in New Mexico to the satisfaction of the  
2 multistate Facilitator, Qwest can, according both to this Commission and the  
3 Federal Communications Commission ("FCC"), fully satisfy Track A by  
4 establishing the existence of at least one CLEC providing resale-based competition  
5 in the residential market. My testimony shows that Qwest is, in fact, able to make  
6 such a showing and thus has satisfied Track A.

7  
8 Qwest has provided actual tracking counts of resold residential lines showing that,  
9 as of September 30, 2001, CLECs in New Mexico were serving at least 1,791  
10 residential access lines via resale. In addition, New Mexico CLECs responding to  
11 the Commission's data requests report that they are serving at least 1,380 residential  
12 access lines via resale. Neither of the witnesses opposing Qwest in this proceeding  
13 has challenged the accuracy of Qwest's tracking numbers or the CLEC data request  
14 responses; on the contrary, Mr. Ripperger and Ms. Roth cite these numbers  
15 themselves. Mr. Ripperger also concedes the existence of a single CLEC serving  
16 over 1,300 residential lines. All of these facts, which are not in dispute, plainly  
17 show that CLECs are serving a more than *de minimis* amount of residential  
18 customers in New Mexico. On the basis of these undisputed facts, the Commission  
19 should find that Qwest has satisfied all of the requirements of Track A.

20  
21 **III. LEGAL BACKGROUND**  
22

1    **Q.    DID MR. RIPPERGER AND MS. ROTH ACCURATELY DESCRIBE THE**  
2       **APPLICABLE LEGAL STANDARDS IN THIS PROCEEDING?**

3    A.    No. Both witnesses have misstated the relevant legal standards governing this  
4       proceeding. It is therefore necessary to rebut their legal analysis here.

5  
6    **Q.    WHAT ARE THE REQUIREMENTS OF TRACK A?**

7    A.    The Track A provision of the Telecommunications Act of 1996,<sup>1</sup> as interpreted by  
8       the FCC, requires a Bell Operating Company ("BOC") to demonstrate four things:  
9       (1) that it has one or more binding agreements with CLECs that have been approved  
10      under section 252 of the Act; (2) that it provides access and interconnection to one  
11      or more unaffiliated competing providers of telephone exchange service; (3) that  
12      these competitors collectively provide telephone exchange service to residential and  
13      business subscribers; and (4) that these competing providers collectively offer  
14      telephone exchange service either exclusively or predominantly over their own  
15      facilities (which include the UNEs they lease from the BOC) in combination with  
16      resale.<sup>2</sup>

17  
18   **Q.    WHAT TYPE OF CARRIER QUALIFIES AS A "COMPETING**  
19       **PROVIDER" UNDER TRACK A?**

---

<sup>1</sup> 47 U.S.C. § 271(c)(1)(A).

<sup>2</sup> See Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543, ¶¶ 62-104 (1997) ("Ameritech Michigan Order").

1 A. According to the FCC, a CLEC is a “competing provider” as long as it is “actually  
2 . . . in the market and operational (*i.e.*, accepting requests for service and providing  
3 such service for a fee)”<sup>3</sup> and “serving more than a *de minimis* number of end-  
4 users.”<sup>4</sup> These minimal requirements are intended to ensure that the CLEC is  
5 presently “an actual commercial alternative” in the market and not simply in the  
6 planning or testing stages.<sup>5</sup>

7  
8 **Q. DOES TRACK A REQUIRE QWEST TO ESTABLISH THAT MULTIPLE**  
9 **CLECS ARE SERVING A MORE THAN DE MINIMIS NUMBER OF**  
10 **CUSTOMERS IN NEW MEXICO?**

11 A. No. The 1996 Act states that, in order satisfy Track A, a BOC must demonstrate  
12 that it is providing access and interconnection to “*one or more* unaffiliated  
13 competing providers of telephone exchange service . . . to residential and business  
14 subscribers.”<sup>6</sup> Nothing in the Act requires the BOC to prove the existence of more  
15 than one active CLEC in a particular state. The FCC has also agreed with that  
16 reading of the 1996 Act: although Brooks Fiber was the only CLEC cited by  
17 Ameritech that qualified as a “competing provider” for purposes of Track A in  
18 Michigan, the FCC found that Ameritech had satisfied Track A in that state. The  
19 FCC held that, “[b]ecause we find that Brooks Fiber is offering service ‘exclusively

---

<sup>3</sup> *Ameritech Michigan Order* ¶ 75.

<sup>4</sup> *Id.* ¶ 78.

<sup>5</sup> *Id.* ¶ 75.

<sup>6</sup> 47 U.S.C. § 271(c)(1)(a) (emphasis added).

1 over [its] own telephone exchange service facilities,' we need not determine  
2 whether MFS WorldCom and TCG are also offering service . . . ."<sup>7</sup>

3  
4 **Q. MUST A CLEC SERVE A MINIMUM SHARE OF THE MARKET IN**  
5 **ORDER TO QUALIFY AS A "COMPETING PROVIDER?"**

6 **A.** No. The FCC has made clear that a CLEC need not achieve any particular market  
7 share or serve any particular number of customers to qualify as a "competing  
8 provider" for purposes of Track A; the CLEC must simply be operational and  
9 serving a more than *de minimis* number of customers for a fee. Neither Track A nor  
10 any other provision of section 271 turns on CLECs' individual or collective  
11 customer counts or market shares. While Mr. Ripperger and Ms. Roth both suggest  
12 that a CLEC must be serving a minimum amount of the market in order to qualify as  
13 a "competing provider,"<sup>8</sup> they cannot point to any legislative history, statutory  
14 language, or FCC holdings that support their views. The FCC has stated outright  
15 that it "do[es] not read section 271(c)(1)(A) to require that a new entrant serve a  
16 specific market share in its service area to be considered a 'competing provider.'"<sup>9</sup>  
17 As the FCC has noted repeatedly, including in its most recent section 271 orders,  
18 both houses of Congress specifically rejected language that would have put some

---

<sup>7</sup> *Ameritech Michigan Order* ¶ 103.

<sup>8</sup> See Testimony of Michael S. Ripperger in Response to Qwest's New Mexico Specific Tract [sic] A Evidence, *In the Matter of U S West Communications, Inc.'s Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process*, Utility Case No.3269 (Dec. 31, 2001), Public Version, at 14:8-18 ("Ripperger Test."); Testimony of Diane F. Roth on Behalf of AT&T Communications of the Mountain States, Inc. Regarding Track A, *In the Matter of Qwest Corporation, Inc.'s Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process* (Dec. 31, 2001),

1 kind of CLEC market share requirement in Track A.<sup>10</sup> The D.C. Circuit agrees. It  
2 recently recognized that section 271 “imposes no volume requirements for  
3 satisfaction of Track A,” and that the FCC has read “Track A to require only a  
4 minimal volume of competition to be present.”<sup>11</sup> Similarly, FCC Chairman Michael  
5 Powell has emphasized that neither Track A, the public interest requirement, nor  
6 any other part of section 271 imposes any type of market share test:

7 Some of the critics wish it was a market share test. And I won’t even  
8 opine on whether that’s good or bad, but I know that was expressly  
9 rejected by Congress. It doesn’t say if there aren’t more than 10% of  
10 people in the market don’t approve them. That’s just not what 271  
11 says. And I know that’s what a lot of people wish it said. But it  
12 doesn’t.<sup>12</sup>  
13

14 Track A merely requires that there be one or more “operational” CLECs in New  
15 Mexico providing service “for a fee” to customers; it does *not* require that CLECs

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Public Version, at 2:21-3:22 (“Roth Test.”).

<sup>9</sup> *Ameritech Michigan Order* ¶ 77.

<sup>10</sup> See Memorandum Opinion and Order, *Joint Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, 16 FCC Rcd 20719 (2001), at D-6 n.27 (“SBC Arkansas/Missouri Order”) (“Congress had considered and rejected language that would have imposed a ‘market share’ requirement in Section 271(c)(1)(A) [Track A].”); Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419 (2001) at C-6 n.27 (same); Memorandum Opinion and Order, *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, 16 FCC Rcd 14147 (2001) at D-6 n.27 (same); Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd 6237 ¶ 34 n.78 (2001) (“SBC Kansas/Oklahoma Order”) (same); *Ameritech Michigan Order* ¶ 77 n.170 (citing legislative history). The SBC Kansas/Oklahoma Order was recently remanded by the D.C. Circuit on grounds unrelated to Track A. See *Sprint Communications Company L.P. v. FCC*, 2001 WL 1657297 (D.C. Cir. Dec. 28, 2001).

<sup>11</sup> *Sprint Communications*, 2001 WL 1657297, at 3, 5. The D.C. Circuit did note, however, that the FCC’s findings with respect to the volume of competition were not specifically being challenged in that case. *Id.* at 5-6.



1 have achieved any particular number of customers or share of the market in New  
2 Mexico overall.

3  
4 **Q. WHY DOESN'T TRACK A CONTAIN A MINIMUM MARKET SHARE**  
5 **REQUIREMENT FOR RESIDENTIAL COMPETITION?**

6 A. The FCC has made clear that Congress intended section 271 approval to turn only  
7 on whether a BOC has taken those actions within its control to open its local market  
8 pursuant to the competitive checklist. Congress recognized that the BOC has no  
9 control over its competitors' business strategies or decision making; hence, it did  
10 not require the BOC to guarantee that CLECs actually enter the market once opened.  
11 As the FCC has noted, the Senate specifically rejected language that would have  
12 required the BOC to prove that there are CLECs in operation that are "'capable of  
13 providing a *substantial* number of business and residential customers'" with  
14 service.<sup>12</sup> For this reason, nothing in Track A or any other part of the 1996 Act  
15 requires a BOC to prove that CLECs have in fact entered the market in any  
16 significant number or achieved any particular level of market penetration. The FCC  
17 has acknowledged that:

18 Congress specifically declined to adopt a market share or other  
19 similar test for BOC entry into long distance, and we have no  
20 intention of establishing one here. Moreover, pursuant to section  
21 271(c)(2)(B) [the competitive checklist], the Act provides for long  
22 distance entry even where there is no facilities-based competition  
23 satisfying section 271(c)(1)(A) [Track A]. This underscores

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<sup>12</sup> "Powell Defends Stance on Telecom Competition," Communications Daily, May 22, 2001.

<sup>13</sup> *Id.* ¶ 77 n.170 (quoting 141 Cong. Rec. S8319-26 (daily ed. June 14, 1995)) (emphasis added).

1 Congress' desire to condition approval *solely on whether the*  
2 *applicant has opened the door for local entry* through full checklist  
3 *compliance, not on whether competing LECs actually take advantage*  
4 *of the opportunity to enter the market.*<sup>14</sup>  
5

6 These considerations are especially salient in the residential market, since, as the  
7 D.C. Circuit has recognized, "the residential market may not be attractive to  
8 competitors" even when the conditions for entry are favorable, resulting in a low  
9 level of competition.<sup>15</sup> The FCC has expressly held in virtually every section 271  
10 order since its New York decision that low levels of competition entry in the  
11 residential market are not a reason to deny section 271 approval. For example, in  
12 the *Verizon Massachusetts Order*, the FCC held that:

13 Given an affirmative showing that a market is open and the  
14 competitive checklist has been satisfied, low customer volumes in  
15 and of themselves do not undermine that showing. Factors beyond a  
16 BOC's control, such as individual competitive LEC entry strategies,  
17 might explain a low residential customer base.<sup>16</sup>  
18

19 **Q. MUST A CLEC PROVIDE SERVICE AT THE SAME PRICE AS THE BOC**  
20 **IN ORDER QUALIFY AS A "COMPETING PROVIDER?"**

21 **A.** No. Just as Track A does not contain a market share requirement, the statute  
22 similarly does not require CLECs to be offering service at the same prices as the

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<sup>14</sup> Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region InterLATA Service in the State of New York*, 15 FCC Rcd 3953 ¶427 (1999) (footnotes omitted) (emphases added).

<sup>15</sup> *Sprint Communications*, 2001 WL 1657297, at 5-6

<sup>16</sup> Memorandum Opinion and Order, *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, 16 FCC Rcd 8988 ¶ 235 (2001)

1 BOC to qualify under Track A. As the FCC acknowledged in the *Ameritech*  
2 *Michigan Order*, the House of Representatives rejected a version of Track A that  
3 would have demanded the presence of a CLEC capable of offering “service that is  
4 comparable in *price*, features, and scope” to that offered by the BOC.<sup>17</sup> For  
5 example, although there are “certain technical and functional differences between  
6 PCS and wireline local exchange service,”<sup>18</sup> the FCC has held that a PCS provider  
7 can qualify as “competing provider” under Track A because the two services are  
8 “functionally equivalent.”<sup>19</sup> The FCC acknowledged “customers may be willing to  
9 pay a premium for PCS service in light of the benefits of mobility.”<sup>20</sup>

10

11 **Q. MUST A CLEC PROVIDE SERVICE WITH THE SAME FEATURES OR**  
12 **WITH THE SAME CALLING AREA AS THE BOC IN ORDER QUALIFY**  
13 **AS A “COMPETING PROVIDER?”**

14 A. No. The service offered by a CLEC can differ in features and calling area from that  
15 offered by the BOC and still qualify under Track A. As discussed above, the FCC  
16 has acknowledged that the House of Representatives rejected a version of Track A  
17 that would have required a BOC to show that CLECs are capable of offering  
18 “service that is comparable in price, *features*, and *scope*” to that offered by the

---

<sup>17</sup> *Ameritech Michigan Order* ¶77 n. 170 (quoting H.R. Rep. No. 104-204, at 7 (1995)) (emphasis added).

<sup>18</sup> Memorandum Opinion and Order, *Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd 20599 ¶ 28 (1998) (“Second BellSouth Louisiana Order”).

<sup>19</sup> *Id.* ¶ 29.

<sup>20</sup> *Id.* ¶ 32.

1 BOC.<sup>21</sup>

2

3 **Q. DOES THE FINANCIAL HEALTH OR COMPETITIVE FORTUNES OF A**  
4 **CLEC AFFECT WHETHER IT IS A “COMPETING PROVIDER” FOR**  
5 **PURPOSES OF TRACK A?**

6 A. No. The FCC has made clear that the financial health of the CLEC industry or  
7 individual CLECs is irrelevant to section 271.<sup>22</sup> The FCC does not even require a  
8 CLEC to be accepting new customers to qualify as a “competing provider” for the  
9 purposes of Track A. In the recent *SBC Arkansas/Missouri Order*, the FCC held  
10 that there was no requirement that a CLEC “necessarily be accepting new customers  
11 in order to qualify for Track A . . . .”<sup>23</sup> In that decision, the FCC found that SBC  
12 had satisfied Track A for Arkansas despite the fact that the only CLEC of any  
13 significant size in the state, ALLTEL, was no longer marketing its service to new  
14 residential customers.<sup>24</sup>

15

16 **Q. MUST A CLEC SERVE A SPECIFIC GEOGRAPHIC REGION OF THE**  
17 **STATE IN ORDER TO QUALIFY AS A “COMPETING PROVIDER?”**

18 A. No. The FCC has declared unequivocally that it “do[es] not read section  
19 271(c)(1)(A) to require any specified level of geographic penetration by a competing

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<sup>21</sup> *Ameritech Michigan Order* ¶77 n. 170 (quoting H.R. Rep. No. 104-204, at 7 (1995)) (emphasis added).

<sup>22</sup> *See Verizon Pennsylvania Order* ¶ 126.

<sup>23</sup> *See SBC Arkansas/Missouri Order* ¶ 119.

<sup>24</sup> *Id.*

1 provider.”<sup>25</sup> A CLEC qualifies as a “competing provider” for Track A as long as it  
2 provides service ““*somewhere* in the State”” — not necessarily throughout the state  
3 as a whole.<sup>26</sup> As the *Ameritech Michigan Order* notes, the plain language of Track  
4 A does not contain any requirement of ubiquity, and the legislative history makes  
5 clear that no such test was intended.<sup>27</sup>

6  
7 **Q. MUST A CLEC TARGET THE SAME TYPES OF CUSTOMERS AS THOSE**  
8 **SERVED BY THE BOC IN ORDER TO QUALIFY AS A “COMPETING**  
9 **PROVIDER?”**

10 A. No. Nothing in the 1996 Act, the legislative history of the Act, or the FCC’s orders  
11 requires a CLEC to market its service to any particular type or group of customers,  
12 to the same type of customers the BOC is serving, or to the market as a whole. As a  
13 result, the fact that a CLEC is targeting or serving a group of customers different  
14 from those served by the BOC is irrelevant for the purposes of Track A. Given that,  
15 as discussed above, Track A contains no requirements regarding the market share,  
16 order volume, or geographic scope of a CLEC or the price features of its service, a  
17 requirement that a CLEC must target the same customers served by the BOC would  
18 be inconsistent with the provisions of the statute.

19  
20 **Q. CAN THE RESIDENTIAL COMPETITION REQUIREMENT OF TRACK A**

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<sup>25</sup> *Ameritech Michigan Order* ¶ 76.

<sup>26</sup> *Id.* (quoting H.R. Rep. No. 104-204, at 77 (1995)) (emphasis added by FCC).

1           **BE SATISFIED SOLELY BY THE EXISTENCE OF RESALE-BASED**  
2           **COMPETITION?**

3    A.    Yes. Track A is satisfied if a BOC can demonstrate that competitors are serving  
4           business customers via facilities-based competition (which the Facilitator found in  
5           Qwest's case, and which is not at issue in this hearing) and residential customers via  
6           resale-based competition. While the Facilitator apparently believed that Qwest was  
7           required to demonstrate the existence of both business and residential facilities-  
8           based competition to satisfy Track A, the FCC has twice held expressly that the  
9           statute contains no such requirement. In the *Second BellSouth Louisiana Order*, the  
10          FCC noted that "[t]he language of section 271(c)(1)(A) [the Track A provision] is  
11          ambiguous on its face," since the requirement that there be both business and  
12          residential competition appears in a separate sentence from the requirement that  
13          CLECs be using their own facilities.<sup>28</sup> As a result, "[i]t is not entirely clear whether  
14          the statutory language requires that the competitor or competitors offer  
15          predominantly facilities-based service to each category of subscribers — business  
16          and residential — independently or to the two classes taken together."<sup>29</sup> The FCC  
17          held the better reading to be that no showing of facilities-based residential  
18          competition is required: "[T]he language of section 271(c)(1)(A) appears to stop  
19          short of mandating actual provisioning of competitive facilities-based telephone

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<sup>27</sup> *Id.*

<sup>28</sup> *Second BellSouth Louisiana Order* ¶ 46.

<sup>29</sup> *Id.*

1 exchange services independently to both business and residential subscribers.”<sup>30</sup>

2 The FCC went on to explain that,

3 . . . reading the statutory language to require that there must be  
4 facilities-based service to both classes of subscribers to meet Track A  
5 could produce anomalous results, and there appear to be overriding  
6 policy considerations that lead to a contrary construction of the  
7 statutory language. In particular, if all other requirements of section  
8 271 have been satisfied, *it does not appear to be consistent with*  
9 *congressional intent to exclude a BOC from the in-region, interLATA*  
10 *market solely because the competitors’ service to residential*  
11 *customers is wholly through resale.*<sup>31</sup>  
12

13 The FCC reaffirmed this holding in the *SBC Kansas/Oklahoma Order*. There, the  
14 FCC stated that it was prepared to find that SBC had satisfied the residential portion  
15 of Track A for Kansas solely on the basis of resale-based competition.<sup>32</sup> According  
16 to the FCC, had it been unable to rely on SBC’s evidence of facilities-based  
17 competition, it “likely would not have denied [SBC’s] application on ‘Track A’  
18 grounds, and would have relied on the existence of competitors’ service to  
19 residential customers through resale.”<sup>33</sup> Thus, the *SBC Kansas/Oklahoma Order*  
20 plainly demonstrates that the residential portion of Track A can be satisfied solely  
21 through resale-based competition.  
22

23 **Q. HAS THIS COMMISSION CONSIDERED WHETHER QWEST CAN**  
24 **SATISFY THE RESIDENTIAL COMPETITION REQUIREMENT OF**  
25 **TRACK A SOLELY THROUGH RESALE-BASED COMPETITION?**

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<sup>30</sup> *Id.* ¶ 46.

<sup>31</sup> *Id.* ¶ 48 (emphasis added).

1 A. Yes. In its Procedural Order regarding Track A, this Commission acknowledged  
2 that Qwest can satisfy Track A solely through a showing of resale-based  
3 competition in the residential market: "The Commission recognizes that the FCC  
4 allows for the satisfaction of the residential competition component of Track A  
5 through a showing of competitors' service to residential customers entirely via  
6 resale . . . ."<sup>34</sup> The Commission's Procedural Order establishes the applicable legal  
7 standard for this proceeding, and Mr. Ripperger's and Ms. Roth's failure even to  
8 acknowledge that order is inexcusable.

9  
10 Q. HAS MR. RIPPERGER ACCURATELY DESCRIBED THE FCC'S AND  
11 THIS COMMISSION'S HOLDINGS ON THE SUFFICIENCY OF RESALE-  
12 BASED RESIDENTIAL COMPETITION FOR PURPOSES OF TRACK A?

13 A. No. First, as noted above, Mr. Ripperger fails to mention this Commission's  
14 controlling decision in the Procedural Order at all. Second, with respect to the  
15 FCC's orders, Mr. Ripperger actually concedes that the FCC articulated the rule on  
16 the sufficiency of resale that this Commission has also endorsed; he simply prefers  
17 to call the FCC's discussion a "hint[]" rather than a holding.<sup>35</sup> In Mr. Ripperger's  
18 words, "the FCC has hinted . . . ."<sup>36</sup> Even a cursory review of the two FCC orders in

*to that it might, under certain circumstances, allow a Section 271 to satisfy the residential component of Track A through resale, but it has not actually done so.*

<sup>32</sup> SBC Kansas/Oklahoma Order ¶ 43 n.101.

<sup>33</sup> *Id.*

<sup>34</sup> Procedural Order Regarding Track A, *In the Matter of Qwest Corporation's Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process*, Utility Case No. 3269 (Nov. 6, 2001) ¶ 5 ("Track A Order").

<sup>35</sup> See Ripperger Test. at 11:21.

<sup>36</sup> *Id.*



1 question makes clear that the FCC's rulings are square and unmistakable, not mere  
2 "hints." The fact that the FCC ultimately rejected BellSouth's second Louisiana  
3 section 271 application for failure to meet the competitive checklist does not  
4 undermine the guidance the FCC intentionally provided in that order for future  
5 applications; indeed, all sides in this case agree that many of the relevant standards  
6 for the Track A inquiry come from the *Ameritech Michigan Order*, which also  
7 involved a rejected application. Moreover, the FCC's discussion of the sufficiency  
8 of resale-based competition in the *SBC Kansas/Oklahoma Order* did have practical  
9 significance, since there was a serious dispute about whether the only evidence  
10 demonstrating the existence of facilities-based competition was properly in the  
11 record.<sup>37</sup> For that reason, the FCC stated *explicitly* that it "would have relied on the  
12 existence of competitors' service to residential customers through resale" to satisfy  
13 Track A if it was required to exclude the evidence of facilities-based competition.<sup>41</sup>  
14 Simply put, the FCC's statements in these orders that resale-based residential  
15 competition alone can satisfy Track A could not be clearer, and Mr. Ripperger's  
16 argument to the contrary must be rejected.

17  
18 **Q. PLEASE DISCUSS MR. RIPPERGER'S STATEMENT THAT QWEST**  
19 **"SHOULD NOT" ATTEMPT TO DEMONSTRATE RESIDENTIAL**

---

<sup>37</sup> *SBC Kansas/Oklahoma Order* ¶ 43.

<sup>38</sup> See Ripperger Test. at 11:4-20.

<sup>39</sup> *Id.* at 11:21-23.

<sup>40</sup> See *Second BellSouth Louisiana Order* ¶ 48.

<sup>41</sup> *SBC Kansas/Oklahoma Order* ¶ 43 n.101.

1           **COMPETITION THROUGH RESALE-BASED COMPETITION.**

2    A.    Mr. Ripperger also argues that “Qwest should not try to become the first Section  
3           271 applicant to ask the FCC to determine that it meets the residential component of  
4           Track A solely through resale for a variety of reasons.”<sup>43</sup> He gives two reasons,  
5           neither of which is persuasive. First, he argues that “it is not clear that the  
6           Commission” will find that Qwest has complied with the remaining requirements of  
7           section 271, including the competitive checklist. Whether that is true is being tested  
8           in the other proceedings in this docket and is irrelevant to the present hearing.  
9           Second, Mr. Ripperger asserts that, because “competitive levels are very weak in  
10          New Mexico,” Qwest will be unable to prove that the resellers in the State “are  
11          actually ‘competing providers’” for the purposes of Track A.<sup>45</sup> But, as previously  
12          discussed, Track A does not require a CLEC to achieve any particular market share  
13          to qualify as a “competing provider.” Mr. Ripperger’s suggestion that resellers  
14          cannot be “competing providers” if their customer numbers are (in his words)  
15          “weak” thus misstates the law. Regardless of the overall “competitive levels” in  
16          New Mexico, as long as a reseller is serving more than a *de minimis* number of  
17          customers in the State, it qualifies as a “competing provider” under Track A.

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<sup>42</sup>    *SBC Kansas/Oklahoma Order* ¶ 43 n.101.

<sup>43</sup>    Ripperger Test. at 12:3-5.

<sup>44</sup>    *Id.* at 12:5-7.

<sup>45</sup>    *Id.* at 12:19-13:2.

1  
2 **IV. PROCEDURAL BACKGROUND**  
3

4 **Q. DO MR. RIPPERGER AND MS. ROTH ACCURATELY DESCRIBE THE**  
5 **PROCEDURAL BACKGROUND TO THIS PROCEEDING?**

6 A. No. The witnesses have failed to describe fairly the procedural history of this  
7 proceeding. Therefore, it is necessary to summarize that history here.  
8

9 **Q. PLEASE SUMMARIZE THE PROCEDURAL BACKGROUND OF THIS**  
10 **PROCEEDING.**

11 A. Qwest and a number of other parties, including CLECs and Commission Staff,  
12 participated in the multistate proceeding intended to address the question of whether  
13 Qwest has satisfied the requirements of a number of aspects of the section 271  
14 application process, including Track A, for the seven participating states. The  
15 ultimate goal of the multistate proceeding was to develop a thorough evidentiary  
16 record and obtain a final recommendation on Qwest's compliance with the section  
17 271 requirements from the multistate Facilitator, John Antonuk.  
18

19 **Q. WHAT WERE THE FACILITATOR'S FINDINGS WITH RESPECT TO**  
20 **TRACK A IN NEW MEXICO?**

21 A. The Facilitator determined that Qwest had satisfied the first and second Track A  
22 requirements in New Mexico for both business and residential competition in New

1 Mexico.<sup>46</sup> He also found that Qwest had fully met its burden under Track A's third  
2 and fourth prongs with respect to New Mexico's business market by demonstrating  
3 the existence of significant competition, including facilities-based competition, in  
4 that market segment.<sup>47</sup> Nevertheless, because the Facilitator believed that Qwest  
5 had not yet shown that there was *facilities-based* competition for residential  
6 customers in New Mexico, he ruled that Qwest had not met its burden with respect  
7 to the residential market because of the lack of facilities-based competition in the  
8 State.<sup>48</sup> The Facilitator erroneously failed to consider Qwest's evidence of resale-  
9 based residential competition, as the FCC's Orders require. Because the Facilitator  
10 felt that he could not rely only on estimates of the level of residential competition,  
11 he held that Qwest was required to make "an independent showing that there is  
12 actual service to residential end users."<sup>49</sup> However, the Facilitator set the bar for  
13 this showing very low; he noted that Qwest is only required to establish the  
14 existence of "any residential service *at all*" in New Mexico.<sup>50</sup> The Facilitator's  
15 standard is in line with the requirements of Track A, which, as noted above, only  
16 require Qwest to establish the existence of at least one CLEC serving more than *de*  
17 *minimis* amount of residential customers.

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<sup>46</sup> *Id.* In the Matter of Qwest Corporation's Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process, Facilitator's Report on Group 5 Issues: General Terms and Conditions, Section 272, and Track A, filed Sept. 21, 2001, at 73-74, 85-86 ("Facilitator's Report").

<sup>47</sup> *Id.* at 85.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 80.

<sup>50</sup> *Id.* (emphasis added).

1    **Q.    HOW DID QWEST RESPOND TO THE FACILITATOR'S TRACK A**  
2    **FINDINGS?**

3    A.    Qwest asked the Commission to endorse the Facilitator's findings that Qwest had  
4    satisfied the first two prongs of Track A for all segments of the market and the third  
5    and fourth prongs with respect to the business market. On the other hand, Qwest  
6    took issue with the Facilitator's finding that Qwest had not established the existence  
7    of residential competition in New Mexico. Qwest argued that the Facilitator had  
8    applied the wrong legal standard when he failed to take into account the presence of  
9    resale-based competition in New Mexico.<sup>51</sup>

10

11   **Q.    HOW DID THE NEW MEXICO COMMISSION RULE IN RESPONSE TO**  
12   **QWEST'S COMMENTS ON THE FACILITATOR'S REPORT?**

13   A.    As noted above, this Commission found that Qwest could in fact satisfy the  
14   residential component of Track A solely through a showing of resale-based  
15   competition.<sup>52</sup> The Commission also held, however, that because no parties  
16   addressed the validity of the resale data submitted by Qwest in the multistate  
17   proceeding, a further inquiry was required to establish the validity of the data.<sup>53</sup>  
18   Specifically, the Order stated that this inquiry has two purposes:

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<sup>51</sup> See Qwest's Comments, Exceptions and Brief Regarding the Facilitator's Report on Group 5 Issues, *In the Matter of U S West Communications, Inc.'s Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process* (Oct. 5, 2001) at 15-18.

<sup>52</sup> *Track A Order* ¶ 5. The Commission did not specifically address the Facilitator's findings with respect to the existence of business competition in New Mexico in its Track A Order, indicating that the Commission accepted the Facilitator's findings on the matter.

<sup>53</sup> *Id.*

(i) examining the information contained in the Affidavit of John W. Badal that purports to “document certain updated and additional information . . . regarding the extent to which local exchange service is provided to residential customers in New Mexico by carriers competing with Qwest”, and (ii) examining Qwest’s evidence regarding the nature and extent of the provision of residential local exchange service through resale.<sup>54</sup>

The rebuttal testimony of Mr. Badal addresses the first issue, and my testimony addresses the second.

**Q. WHAT IS THE SPECIFIC PURPOSE OF THIS INQUIRY?**

A. The goal of this hearing should simply be to confirm whether there is more than a *de minimis* amount of resale-based or facilities-based competition in the residential market in New Mexico, and any attempt to address matters unrelated to this proceeding, including the level of business competition in the State, are irrelevant and should be ignored. Because Qwest has already proven that CLECs are serving business customers via facilities-based competition in New Mexico to the satisfaction of the Facilitator (and because the Commission has not suggested that further hearings on that aspect of the Facilitator’s findings are necessary), if Qwest establishes that even *one* CLEC is offering a more than *de minimis* level service to residential customers in the State through either facilities-based or resale-based competition, Qwest will have satisfied all of the requirements Track A for New Mexico.

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<sup>54</sup> *Id.* ¶ 9 (citations omitted).

1           **V.       EVIDENCE OF RESALE-BASED RESIDENTIAL COMPETITION**

2  
3       **Q.       WHAT SOURCES HAS QWEST USED TO DETERMINE THE AMOUNT**  
4       **OF RESALE-BASED RESIDENTIAL COMPETITION IN NEW MEXICO?**

5       A.       I have reported actual counts of resold residential lines contained in Qwest's  
6       Customer Record Information System (CRIS), which is Qwest's billing system from  
7       which virtually all retail and resale bills are generated. In this proceeding, I have  
8       reported actual resold residential access line in-service counts from the CRIS system  
9       in direct testimony, the multi-state workshops, and in response to New Mexico Staff  
10       Data Request Set 4, Number 2.

11  
12       **Q.       HAS QWEST DEMONSTRATED THE EXISTENCE OF A MORE THAN**  
13       **DE MINIMIS AMOUNT OF RESALE-BASED RESIDENTIAL**  
14       **COMPETITION IN NEW MEXICO?**

15       A.       Yes. In my Supplemental direct testimony, filed November 16, 2001, I filed  
16       Confidential Attachment E, showing that more than a *de minimis* number of resold  
17       residential access lines (at least 1,791) were in service in New Mexico as of  
18       September 30, 2001. This confidential attachment was subsequently updated in a  
19       supplemental response to Staff Data Request Set 4, Number 2 on <sup>December 31,</sup> ~~December 17,~~  
20       2001, and continues to show that CLECs are serving more than a *de minimis*  
21       number of residential access lines via resale. CLECs were serving at least 1,791  
22       residential access lines via resale as of September 30, 2001.

1

2   **Q.   WHAT DO THE RESULTS OF THE COMMISSION'S DATA SURVEY**  
3       **SHOW?**

4   A.   The data from Qwest's CRIS system are confirmed by the CLECs' responses to the  
5       Commission's survey. The aggregate number of resold residential access lines self-  
6       reported by CLECs responding to the Commission's survey is approximately 1,380.  
7       However, at least two of the CLECs currently purchasing resold residential service  
8       from Qwest did not file responses to the Commission's survey. One CLEC, Comm  
9       South Companies, Inc., acknowledged that it alone was serving 1,369 residential  
10      access lines via resale as of November 15, 2001. While the number of access line in  
11      service, including both those served by Qwest and those served by its competitors,  
12      varies from month to month, Comm South's self-reported access line totals support  
13      Qwest's position that more than a *de minimis* number of residential access lines are  
14      served on a resale basis in New Mexico.

15

16   **Q.   DO MR. RIPPERGER AND MS. ROTH CONCEDE THAT RESALE-BASED**  
17       **RESIDENTIAL COMPETITION EXISTS IN NEW MEXICO?**

18   A.   Yes. Mr. Ripperger acknowledges the presence of resale-based residential  
19      competition in New Mexico on page 15 of his testimony, where he says that "the  
20      state's largest residential reseller reported it had 1,369 end-use customers as of



1 November 15, 2001.”<sup>55</sup> Likewise, Ms. Roth acknowledges on page 3 of her  
2 testimony that CLECs were serving 1,829 residential access lines via resale as of  
3 September 30, 2001.<sup>56</sup>  
4

5 **Q. HAS ANY PARTY ATTEMPTED TO CHALLENGE THE ACCURACY OR**  
6 **VALIDITY OF THE RESALE DATA?**

7 A. No. The number of resold residential access lines discussed in this testimony, as  
8 well as in previously-filed testimony and in the multi-state workshops, is simply a  
9 count of resold residential access lines from Qwest’s CRIS billing system. No party  
10 in this proceeding has challenged the accuracy of the CRIS database, nor has any  
11 party challenged the accuracy of the Comm South response to the Commission’s  
12 CLEC survey discussed above, in which Comm South provided new information  
13 regarding the number of New Mexico residential access lines it serves on a resold  
14 basis.  
15

16 **Q. IS QWEST “BACKING AWAY” FROM ITS PREVIOUS ASSERTIONS**  
17 **REGARDING THE NUMBER OF LINES BEING SERVED BY RESALE-**  
18 **BASED COMPETITION?**

19 A. No. At Page 15, line 8 and 9, Mr. Ripperger states “Mr. Teitzel also seems to be  
20 backing away from Qwest’s previous claim that resale-based CLECs serve 3,064

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<sup>55</sup> Ripperger Test. at 15:17-18.

<sup>56</sup> Roth Test. at 3:18.

1 residential access lines via resale in New Mexico.” His implication is wrong.  
2 Apparently, Mr. Ripperger is referring to the change in residential resold lines in  
3 service over time. In Exhibit S8-QWE-DLT-8 filed in the Multi-state proceeding, I  
4 accurately reported that, as of April 30, 2001, a total of 3,064 residential resold  
5 access lines were in service in New Mexico. In my supplemental response to Staff  
6 Data Request Set 4, Number 2, I reported that, as of September 30, 2001 (five  
7 months after April 30, 2001), the total number of residential resold lines in service  
8 was 1,791. In both instances, I have reported the number of resold residential access  
9 lines in service that were contained in Qwest’s CRIS billing system at that particular  
10 point in time. It is not surprising that this number would rise and fall from one point  
11 in time to another. Contrary to Mr. Ripperger’s implication, the fact that I provided  
12 the most current data available at any given point in time does not indicate that  
13 Qwest has “backed away” from any particular piece of evidence.

14  
15 The local exchange market is dynamic and is being influenced by a number of  
16 factors, including state and national economic issues, technological changes and  
17 alterations in competitive business models of CLECs. Clearly, the tightening of  
18 capital markets over the past year has driven changes in CLECs’ focus upon  
19 residential local exchange markets, and has created an incentive to focus upon  
20 markets which have the potential to yield the greatest short term return, such as the  
21 business markets in major metropolitan areas.  
22

1    **Q.    IS MR. RIPPERGER CORRECT WHEN HE SUGGESTS THAT CLECS**  
2       **OFFERING RESALE-BASED SERVICE ARE NOT ACTUALLY**  
3       **COMPETING WITH QWEST FOR RESIDENTIAL COMPETITORS?**

4    **A.**    No. Mr. Ripperger's argument that CLECs serving "high risk" customers or that are  
5       incapable of providing comparable service to Qwest are not "competing providers"  
6       for the purposes of Track A<sup>57</sup> is not supported by the language, legislative history, or  
7       FCC interpretation of section 271. Mr. Ripperger does not cite to a single authority  
8       to support his argument, nor could he: none of the FCC's section 271 orders has  
9       ever excluded a CLEC's access line information because the CLEC targets credit-  
10      risk customers. As discussed in section III above, the 1996 Act does not require a  
11      CLEC to serve a particular segment of the market, match the BOC's customer  
12      profile, or charge prices comparable to the BOC in order to qualify as a "competing  
13      provider." For this reason, Mr. Ripperger's assertion that "customers with access to  
14      Qwest local telephone service would not be likely to find terms like [those offered  
15      by CLECs in New Mexico] competitively attractive," is simply irrelevant for the  
16      purposes of Track A. As long as a CLEC is operational and serving a more than *de*  
17      *minimis* number of customers for a fee, it is considered a "competing provider"  
18      under 1996 Act. Simply put, nothing in the 1996 Act requires CLECs to target or  
19      serve the same group of customers served by the BOC.

20  
21   **Q.    AT PAGES 19 AND 20 OF HIS DIRECT TESTIMONY, MR. RIPPERGER**

1        SUGGESTS THAT CUSTOMERS DISCONNECTED BY QWEST FOR  
2        NON-PAYMENT ARE CUSTOMERS IN WHOM QWEST NO LONGER  
3        HAS AN INTEREST AND SHOULD NOT BE CONSIDERED PART OF  
4        THE CUSTOMER BASE FOR TRACK A PURPOSES. WOULD YOU  
5        COMMENT?

6    A.    In fact, Qwest proactively works with customers disconnected for reasons of non-  
7        payment to help those customers resolve outstanding payment issues and to  
8        reestablish local service with Qwest. In many instances, residential customers in  
9        this category are low income customers, and Qwest provides information to these  
10       customers as to how to obtain Link Up and Lifeline assistance, which provides state  
11       and federal support in the form of billing credits to defray a significant proportion of  
12       nonrecurring and recurring charges for residential local exchange service in New  
13       Mexico. Customers in the low income category can also elect for outbound Toll  
14       blocking, reducing the level of the deposit required to reestablish local service with  
15       Qwest. As these customers resolve outstanding billing issues and resume service  
16       with Qwest, they are counted in Qwest's residential access line base. Similarly, if  
17       these customers elect to instead subscribe to residential local exchange service  
18       offered by a CLEC, they represent residential customers served by a competitor of  
19       Qwest for Track A purposes.

20  
21    Q.    AT PAGE 17, LINES 11 THROUGH 19, MR. RIPPERGER REFERS TO

---

<sup>57</sup> See Ripperger Test. at 18:22-20:14.

1        **STAFF DISCOVERY AND ASSOCIATED QWEST RESPONSES**  
2        **REGARDING “PSEUDO-CLECS” INVOLVED IN THE ROC OSS**  
3        **TESTING PROCESS. WOULD YOU COMMENT ON HIS ASSERTIONS?**

4    A.    Yes. While Mr. Ripperger’s testimony was filed on December 31, 2001, he  
5        inaccurately characterizes Qwest’s confidential response to Staff discovery request  
6        6-8, which was filed on December <sup>31</sup>, 2001, and removed any information  
7        associated with “pseudo CLECs” (P-CLECs) being used by the Regional Oversight  
8        Committee (ROC) to test Qwest’s Operations Support Systems (OSS) processes.  
9        Mr. Ripperger’s implication that Qwest did not fully respond to Staff’s data request  
10       is incorrect.

11  
12   Q.    **AT PAGES 2 THROUGH 4, MS. ROTH IMPLIES THAT DECLINES IN**  
13        **QUANTITIES OF WHOLESALE PRODUCTS USED BY CLECS IN NEW**  
14        **MEXICO “IS EVIDENCE OF A DECREASE IN COMPETITION.” IS HER**  
15        **CONCLUSION ACCURATE?**

16   A.    No. Ms. Roth has seriously misinterpreted information regarding UNE loops in  
17        service in New Mexico. At Page 3, she accurately cites to the number of UNE loops  
18        in service as of April 30, 2001, as shown on Attachment A to my supplemental  
19        testimony filed November 16, 2001. However, she neglects to report that the  
20        number of Unbundled Loops in service in New Mexico shown on Attachment A  
21        (7,715) includes *both* stand-alone unbundled loops and “packaged” loops. Footnote  
22        7 of Attachment A states: “Unbundled loop total includes stand-alone loops and

1 repackaged loops (UNE-P, UNE-Star).”

2  
3 Ms. Roth compares that Attachment A number to the “UNE-Platform Loops In  
4 Service” total found in my response to Staff data request Set 4, Number 11, which  
5 showed a total of 3,925 UNE-Platform loops in service in New Mexico as of  
6 September 30, 2001. *This latter number omits stand-alone unbundled loops*, as the  
7 title clearly indicates. Ms. Roth’s supposed decline in competition is simply an  
8 artifact of the fact she has compared apples and oranges. The relevant comparison  
9 to the April 30, 2001 Attachment A numbers would be the combined number of  
10 stand-alone UNE loops and UNE-Platform loops in service in New Mexico as of  
11 September 30, 2001. That number is 9,301, which is actually an *increase* of 21%  
12 over the April 30, 2001 numbers. In other words, Ms. Roth has the competitive  
13 story exactly backwards.

14  
15 **Q. DOES MS. ROTH’S CONCERN ABOUT THE DECLINE IN THE NUMBER**  
16 **OF RESOLD RESIDENTIAL ACCESS LINES IN SERVICE HAVE ANY**  
17 **LEGAL SIGNIFICANCE?**

18 **A.** No. The relevant legal question is not whether the number of resold residential lines  
19 is increasing or decreasing at any given point in time; rather, the 1996 Act and the  
20 FCC require only that CLECs are serving a more than *de minimis* number of  
21 customers as an absolute level. As a result, even if a state experiences a decline in

1 overall number of customers or resold lines being served by CLECs, a BOC can still  
2 satisfy the requirements of Track A as long as a more than a *de minimis* number of  
3 customers is still being served. Indeed, the FCC<sup>58</sup> in the *SBC Arkansas/Missouri*  
4 *Order* that ALLTEL was a "competing provider" in Arkansas despite the fact that  
5 ALLTEL was no longer marketing its service to new customers in that state.<sup>59</sup>  
6 Whatever the numbers of resale lines in the past, the present level of competition is  
7 more than enough to meet the FCC's standards.  
8

9 VI. CONCLUSIONS AND RECOMMENDATIONS  
10

11 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

12 A. I have demonstrated that Qwest is in full compliance with the Track A requirements  
13 of section 271 in New Mexico. Qwest has already demonstrated the existence of  
14 facilities-based competition in the business market in New Mexico to the  
15 satisfaction of the multistate Facilitator, and Qwest can satisfy the residential  
16 component of Track A by establishing the existence of at least one CLEC providing  
17 resale-based competition in the residential market. My testimony has shown that  
18 Qwest is, in fact, able to make such a showing and thus has satisfied Track A.  
19 Qwest has provided actual tracking counts of resold residential lines showing that,  
20 as of September 30, 2001, CLECs in New Mexico were serving at least 1,791

---

<sup>58</sup> Roth Test. at 3:3-5.

<sup>59</sup> See *SBC Arkansas/Missouri Order* ¶ 119.

1 residential access lines via resale. In addition, New Mexico CLECs responding to  
2 the Commission's data requests report that they are serving at least 1,380 residential  
3 access lines via resale. Neither of the witnesses opposing Qwest in this proceeding  
4 has challenged the accuracy of Qwest's tracking numbers or the CLEC data request  
5 responses; on the contrary, Mr. Ripperger and Ms. Roth cite these numbers  
6 themselves. Mr. Ripperger also concedes the existence of a single CLEC serving  
7 over 1,300 residential lines. All of these facts, which are not in dispute, plainly  
8 show that CLECs are serving a more than *de minimis* amount of residential  
9 customers in New Mexico.

10

11 **Q. WHAT DO YOU RECOMMEND TO THE COMMISSION?**

12 A. In view of the evidence presented through my testimony and that of Mr. Badal, I  
13 recommend that the Commission issue a recommendation to the FCC that Qwest  
14 has met Track A requirements in New Mexico for all segments of the market.

15

16 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

17 A. Yes.

18



VERIFICATION

STATE OF WASHINGTON     )  
                                      ) ss.  
COUNTY OF KING         )

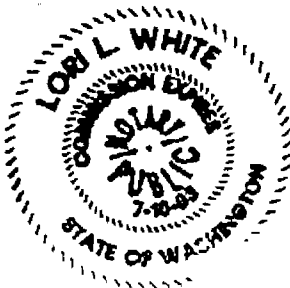
I, David L. Teitzel, being first duly sworn, depose and state that:

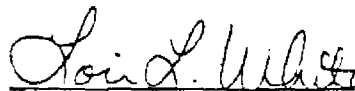
1. I prepared the foregoing Supplemental Rebuttal Testimony of David L. Teitzel.
2. The statements and information contained in the testimony are based on my own knowledge and information or on information that I have obtained from sources I believe to be reliable and truthful, and are therefore true, accurate and complete to the best of my knowledge, information and belief.

FURTHER AFFIANT SAYETH NAUGHT.

  
David L. Teitzel

SUBSCRIBED AND SWORN TO before me this 14th day of January, 2002.



  
Notary Public

Seattle, Washington  
Residing In

My Commission Expires 7/10/03

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S  
SECTION 271 APPLICATION AND  
MOTION FOR ALTERNATIVE  
PROCEDURE TO MANAGE THE  
SECTION 271 PROCESS

CASE NO. 3269

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of **TRACK A REBUTTAL TESTIMONY OF DAVID L. TEITZEL** to be mailed and/or hand-delivered on January 11, 2002 to the following:

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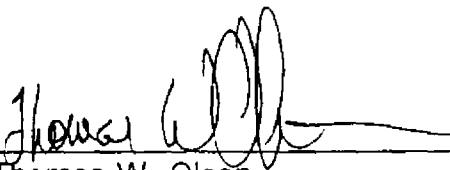
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Press  
Release

**Leap Launches Cricket Comfortable Wireless Service in  
Albuquerque and Santa Fe**

*- Cricket Service Offers Consumers Affordable, All-You-Can-Talk  
Local Wireless Service -*

SAN DIEGO - FEB. 14, 2001 - Leap Wireless International, Inc. (Nasdaq: LWIN), an innovator of wireless communications services, today announced the launch of its Cricket Comfortable Wireless service simultaneously in both Albuquerque and Santa Fe, N.M. Leap pioneered Cricket service, a flat-rate, all-you-can-talk local wireless service designed for the mass consumer market.

"The affordability and predictability of our Cricket service are a perfect fit for both Albuquerque and Santa Fe, which are home to a diverse population and strong contingent of college students and active seniors," said Harvey P. White, Leap's chairman and CEO. "We are confident that Cricket will be a big hit in these new markets, as it offers consumers and local businesses an affordable wireless alternative to traditional landline service."

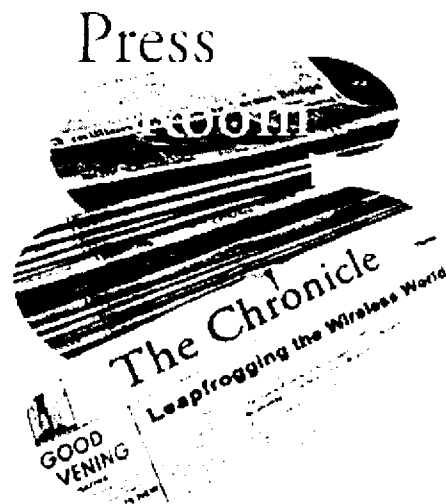
The service is available in both Albuquerque and Santa Fe, and as an additional affordable monthly feature, customers can have service in both markets. Leap has established this two city service option because of the proximity of the two sister cities and will evaluate whether it is appropriate on a case-by-case basis for future market launches.

Leap ended 2000 with more than 190,000 Cricket customers in markets stretching from Salt Lake City to Charlotte, N.C.

**About Leap**

Leap, headquartered in San Diego, Calif., is a customer-focused company providing innovative communications services for the mass market. Leap pioneered the Cricket Comfortable Wireless service that lets customers make all their local calls from their home service area and receive calls from anywhere for one low, flat rate. Leap currently has several new services in development, including data services designed to further transform wireless communications for consumers. For more information, please visit [www.leapwireless.com](http://www.leapwireless.com).

Except for the historical information contained herein, this news release contains "forward-looking statements," including statements reflecting management's current forecast of certain aspects of Leap's future. Forward-looking statements, which are based upon certain assumptions and describe future plans,



QWEST TRACK A  
EXHIBIT 5

strategies and expectations of the Company, are generally identifiable by the use of the words ``believe," ``expect," ``intend," ``plan," ``anticipate," ``estimate," ``project" or similar expressions. These statements are based on current information, which we have assessed but which by its nature is dynamic and subject to rapid and even abrupt changes. The forward- looking statements in this news release speak only of management's views as of the date of this release and we do not undertake any obligation to update this information from this date. Our actual results could differ materially from those stated or implied by such forward-looking statements due to risks and uncertainties associated with our business. Factors that could cause actual results to differ include, but are not limited to: changes in the economic conditions of the various markets our subsidiaries serve which could adversely affect the market for wireless services; our ability to access capital markets; our ability to rollout networks in accordance with our plans, including receiving equipment and backhaul and interconnection facilities on schedule from third parties; failure of network systems to perform according to expectations; the effect of competition; the acceptance of our product offering by our target customers; our ability to retain customers; our ability to maintain our cost, market penetration and pricing structure in the face of competition; uncertainties relating to negotiating and executing definitive agreements and the ability to close pending transactions described in this release; technological challenges in developing wireless data services and customer acceptance of such services if developed; rulings by courts or the FCC adversely affecting our rights to own and/or operate certain wireless licenses; and other factors detailed in the section entitled ``Risk Factors" included in our Transition Report on Form 10-K for the transition period from Sept. 1, 1999 to Dec. 31, 1999 and in our other SEC filings. The forward- looking statements should be considered in the context of these risk factors. Investors and prospective investors are cautioned not to place undue reliance on such forward-looking statements. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

###

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WSJ  
1/21/02

# Ignore the Ads: Calling Prices Are Rising Again

By DEBORAH SOLOMON

Staff Reporter of THE WALL STREET JOURNAL

Terry Rich remembers when long-distance calling was a bargain and the big phone companies fought for her business.

Those days have passed.

After the fierce price wars of the 1990s, long-distance phone bills are steadily rising for customers such as Mrs. Rich, of Upland, Calif. The chief reason: Companies are tacking on fees and monthly minimums that are, in effect, inflating per-minute rates.

The increases are happening as the cost of providing long-distance service is actually falling. Technology has made it cheaper than ever to handle calls, and the big long-distance companies have benefited from cuts of more than \$3 billion in fees they used to pay to the regional phone companies to complete calls.

"This is an enormous mess," says Gene Kimelman, co-director of Consumers Union's Washington office.

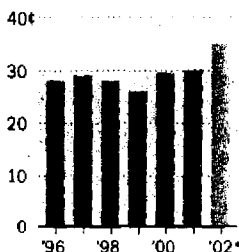
Certainly, long-distance rates have dropped since the telecom industry was deregulated in 1996, with the average consumer paying \$18 per month for long distance in 2000, down from \$21 in 1995, according to the Federal Communications Commission. But rates haven't come down nearly as much as people think—and are now rising once again.

For instance, Sprint Corp.'s Nickel AnyTime plan, which advertises five cents per minute, can cost the average customer as much as 16 cents per minute when all the fees, minimums and in-state costs are factored in. The plan costs five cents per-minute anytime for long-distance calls from one state to another. But long-distance calls within a state can cost as much as 12 cents per minute. On top of it, the plan charges an \$8.95 monthly fee, plus other fees and taxes.

The biggest increase, though, has been in basic rates, the per-minute prices charged to more than 25 million customers who don't opt for a discount-calling plan. The nation's largest providers—AT&T Corp., WorldCom Inc.'s MCI Group and Sprint—have either raised or are planning to raise their basic rates in coming weeks to as much as 35 cents a minute during the day from about 26 cents a minute in 2000. When AT&T's rate increase goes into effect next month, evening calls will jump to 29.5 cents a minute from today's 25 cents—and up 85% from the 16 cents it charged

## Going Up

AT&T per-minute charge for daytime basic long-distance calls:



\*Goes into effect Feb. 1  
Sources: FCC; AT&T

## Long-Distance Phone Rates Are Rising Again

Continued From Page B1

just two years ago.

Fees also are on the rise, and can be creative. In August, Sprint added something called the Carrier Property Tax to its bills. The tax, which amounts to 1.08% of all interstate and international calls, is supposed to allow Sprint to recover a portion of the property taxes the company pays. Sprint says it makes sure to disclose all such costs to customers before they sign up.

Perhaps the biggest fee increase is coming from charges to support the federally mandated Universal Service Fund, which helps compensate phone companies for providing service at affordable rates to rural and low-income customers. This month, AT&T raised its "universal service fee" to 11.5% of monthly long-distance charges from 9.9%, saying it needs to recoup what it pays into the fund. MCI charged customers 7.2% and Sprint charged 8.4% in late 1999; today, both charge 9.9%.

Providers say the recent increases are

the product of a competitive landscape, which has chipped away at revenue and eroded profits. Even the broad entrance of the regional Bell companies into long distance isn't expected to help lower rates. Because they will stress the convenience of buying local and long distance together, "they aren't going to be the lowest-cost provider," says Brian Adamik, president of Yankee Group, a telecom consulting firm. In New York state, for example, Verizon's long-distance rates are comparable to those of AT&T, MCI and Sprint.

There are still bargains for customers willing to opt for somewhat lesser-known long-distance providers, who often resell the service of AT&T, MCI and Sprint at reduced rates. Details of many of the plans can be found at ABTolls.com.

With her bills on the rise, Mrs. Rich recently switched to an MCI plan that offers 700 minutes for a set amount each month. "This way I know what I'm paying each month," she says.

AG

1/21/02

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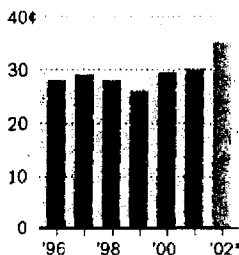
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AG 1



Case No. 3269

AG Exhibit 2  
Not Offered



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AG 3

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Blvd.  
Alamogordo, New Mexico  
88310

**TELEPHONE:**

(505) 437-CASH (2274)

**FAX:**

(505) 439-0221

**MANAGER:**

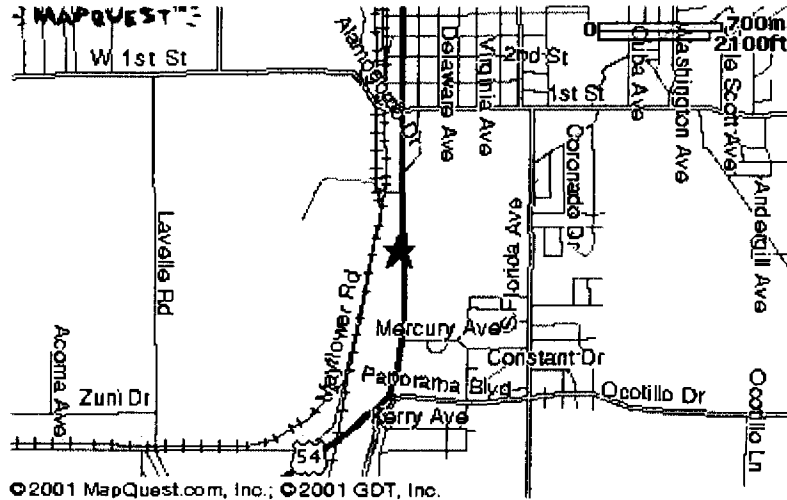
Rose Rice

**E-MAIL:**

rrice@fastbucks.net

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AG 4

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## **THE COST OF CREDIT - FACTS YOU NEED TO**

A SHORT TERM LOAN PROVIDES THE CASH NEEDED TO MEE IMMEDIATE SHORT-TERM CASH FLOW PROBLEM. IT IS NOT FOR LONGER TERM FINANCIAL PROBLEMS FOR WHICH LONG FINANCING MAY BE MORE APPROPRIATE. YOU MAY WANT T YOUR FINANCIAL SITUATION WITH A NONPROFIT COUNSEL IN YOUR COMMUNITY. YOU WILL BE CHARGED ADDITIONAL YOU RENEW THE LOAN.

Although payday loans are short-term advances intended to b quickly, various Truth-in-Lending laws require financing disclo expressed as an Annual Percentage Rate (APR), or the cost of advanced to you expressed as an annual rate. This requirem uniformity among various credit sources, so you can compare make the choice that is right for you.

For the example below we use a \$100 loan that is due in 14 c APR will not change based upon the amount of time your loan Consequently if you pay later than the agreed upon date, you more interest. There is no refund of interest for early repaym

<b>A</b>	<b>B</b>	<b>C</b>
<b>Annual Percentage Rate</b> The cost of your credit based on an annual rate of interest	<b>Finance Charge</b> The dollar amount the credit will cost you	<b>Amount Financed</b> The amount of the loan provided to you
<b>651.79%</b>	<b>\$25.00</b>	<b>\$100.00</b>

**BEFORE THE NEW MEXICO  
PUBLIC REGULATION COMMISSION**

---

**IN THE MATTER OF QWEST )  
CORPORATION'S SECTION 271 )  
APPLICATION AND MOTION FOR )  
ALTERNATIVE PROCEDURE TO )  
MANAGE THE SECTION 271 PROCESS )**

---

**Utility Case No. 3269**

**TESTIMONY OF**

**DIANE F. ROTH**


**ON BEHALF OF**

**AT&T COMMUNICATIONS  
OF THE MOUNTAIN STATES, INC.**

**REGARDING TRACK A**

**(PUBLIC VERSION)**

**DECEMBER 31, 2001**

A handwritten signature in black ink, appearing to read "D. Roth", is located in the bottom right corner of the page.

1   **Q.    PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND CURRENT**  
2   **RESPONSIBILITIES.**

3   A.    My name is Diane F. Roth. I am employed by AT&T as an Assistant Vice President in  
4   the Law and Government Affairs Department. My business address is 1875 Lawrence  
5   Street Denver, Colorado 80202. I am responsible for state government matters,  
6   regulatory and legislative for three states: Colorado, New Mexico and Wyoming.

7   **Q.    PLEASE DESCRIBE YOUR QUALIFICATIONS, EXPERIENCE AND**  
8   **EDUCATION.**

9   A.    I have been employed in the telecommunications industry for over twenty years,  
10   beginning my career at AT&T Long Lines in the Sales department in 1977. After  
11   working in the Network Department, I transferred to Mountain Bell and worked in the  
12   Marketing and Business Services departments. Shortly before the divestiture (late 1983),  
13   I joined AT&T's External Affairs department (later renamed Government Affairs), and  
14   worked on state regulatory cases in Arizona and Utah. In 1995, I was promoted to  
15   Assistant Vice President in the Law and Government Affairs department handling Utah  
16   regulatory. In February of 1996, I accepted the position encompassing responsibilities in  
17   Colorado and Wyoming. In November of 2001, New Mexico was added to my  
18   responsibilities.

19   I received a Bachelor's Degree in Liberal Arts, magna cum laude, in 1977 from Colorado  
20   Women's College. I attended graduate school at the University of Southern California  
21   and completed coursework toward an MBA. I attended numerous educational seminars

1 throughout my career including courses at the University of Michigan and the Brookings  
2 Institution.

3 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

4 A. My testimony examines some of the assertions made by Qwest witnesses John W. Badal  
5 and David L. Teitzel concerning the extent to which local exchange service is provided  
6 to residential customers in New Mexico by carriers competing with Qwest, both through  
7 resale and other means. By examining the Qwest witness' assertions with a critical eye  
8 for detail and common sense, I demonstrate that Qwest *still has not* provided sufficient  
9 evidence to modify the conclusion in the Facilitator's report from the multi-state "271"  
10 proceeding. The Facilitator found that Qwest has not satisfied Track A in New Mexico,  
11 for reason of its failure to provide substantial evidence that competitors are serving  
12 residential end users. While Qwest has provided some additional information in its  
13 testimonies of November 16, 2001, that information is insufficient to prove that  
14 residential alternatives exist and are being used by customers instead of Qwest local  
15 service. Qwest's new information is largely anecdotal. In addition, some of the new  
16 information quite alarmingly demonstrates the decline of competitive alternatives for  
17 residential customers in New Mexico.

18 **Q. PLEASE EXPLAIN THE ALARMING TREND OF DECLINING COMPETITIVE**  
19 **ALTERNATIVES FOR NEW MEXICO RESIDENTIAL TELEPHONE**  
20 **CUSTOMERS.**

21 A. What is alarming about Qwest's testimony is that it demonstrates a **[PROPRIETARY:**  
22 **XX %]** decline in competitors' access lines that use UNE loops and resale. Qwest

1 wholesale services (i.e. UNE loops and resale access lines ) declined by  
2 **[PROPRIETARY: XXXX]** access lines in just five months, as shown by the following  
3 data produced by Qwest in this case. This sharp decline in the use of Qwest wholesale  
4 services by competitive local exchange carriers (CLECs) is evidence of a decrease in  
5 competition.

	as of 4/30/01 <sup>1</sup>	as of 9/30/01 <sup>2</sup>
6 UNE loops	<b>[PROPRIETARY: XXXX]</b>	3,925
7 resold lines	<b>[PROPRIETARY: XXXX]</b>	2,093
8 total wholesale lines	<b>[PROPRIETARY: XXXX]</b>	6,018

10  
11 the wholesale decline between 4/30/01 and 9/30/01:

12 number of access lines:	<b>[PROPRIETARY: XXXX]</b>
13 percent of access lines:	<b>[PROPRIETARY: XX %]</b>

14 Focusing only on residential resale the trend is equally alarming because residential  
15 resale access lines have also plummeted nearly by **[PROPRIETARY: XXXX]**.

	as of 4/30/01	as of 9/30/01
16 residential resold		
17 lines	<b>[PROPRIETARY: XXXX]</b>	1,829

19  
20 decline between 4/30/01 and 9/30/01:

21 number of access lines:	<b>[PROPRIETARY: XXXX]</b>
22 percent of access lines:	<b>[PROPRIETARY: XX %]</b>

23  

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<sup>1</sup> See Supplemental Direct Testimony of David L. Teitzel, Utility Case No. 3269, November 16, 2001, (hereafter "Teitzel Supplemental Direct") Attachment A. (Confidential)

<sup>2</sup> See Qwest response to Data request no.04-011 of the New Mexico State Corporation Commission Staff in Utility Case No. 3269, Attachment A. (Non-Confidential)



1 **Q. DO YOU AGREE WITH MR. TEITZEL THAT THE NET REDUCTION IN**  
2 **RESOLD RESIDENTIAL ACCESS LINES MAY JUST BE AN INDICATION OF**  
3 **A SHIFT IN NEW MEXICO CLEC COMPETITIVE STRATEGIES AWAY**  
4 **FROM RESALE?<sup>3</sup>**

5 A. No, I believe the sharp decline in resold lines is more than just a shift away from resale.  
6 The dramatic decline in CLEC access lines using wholesale services of Qwest, both UNE  
7 and resale, is indicative of the decline in the entire CLEC industry. As I previously  
8 discussed, the decline approaches 50% in less than six months, and encompasses CLEC  
9 use of both UNE loops and resale. If that trend continues, we are likely to see the demise  
0 of CLEC competitive services.

1 **Q. PLEASE COMPARE THE SUBSTANTIAL DECLINE IN CLEC ACCESS LINES**  
2 **PROVISIONED THROUGH QWEST'S WHOLESALE UNE LOOP AND**  
3 **RESOLD SERVICES WITH THE DECREASE IN QWEST'S RESIDENTIAL**  
4 **ACCESS LINE BASE CITED IN THE AFFIDAVIT SUBMITTED WITH THE**  
5 **NOVEMBER 16, 2001 TESTIMONY OF JOHN BADAL IN THIS CASE.<sup>4</sup>**

6 A. Mr. Badal notes that Qwest's residential access lines decreased by 3,014 during the  
7 period from 12/2000 through 7/31/2001. By comparison, this decrease pales in  
8 comparison to the CLEC decline I have previously explained. Because the Qwest  
9 residential access line base is so large, the decrease in access lines amounts to less than  
0 1%. The precise calculation is that Qwest's residential access line base only decreased

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<sup>3</sup> See Teitzel Supplemental Direct, p. 7.

<sup>4</sup> See Affidavit of John Badal, November 16, 2001, page 2.

1 by .49%, while CLEC lines provisioned on Qwest's wholesale services decreased  
2 [PROPRIETARY: XX %]. The huge contrast in these percentages of access line  
3 decreases makes it difficult at best for Qwest to prove its case for residential competition  
4 under Track A. In other words, how can Qwest prove the existence of residential  
5 competition when its retail base has barely changed, but the CLEC base has sharply  
6 declined in a few short months?

7 **Q. DO YOU AGREE THAT THE SMALL DECREASE IN QWEST'S**  
8 **RESIDENTIAL RETAIL ACCESS LINE BASE IS DUE TO CUSTOMERS**  
9 **OPTING FOR ALTERNATIVE OR COMPETITORS' SERVICES IN NEW**  
10 **MEXICO?**

11 **A.** No. Mr. Badal provided some anecdotal information about housing starts in two counties  
12 and claimed that because housing starts in these locations had increased, Qwest had lost  
13 customers to competitors. His analysis did not include any review of housing starts in  
14 any other counties or localities, nor did it review any other economic indicators such as  
15 unemployment data. Discovery responses AT&T 01-20 and 01-23 are attached to my  
16 testimony as Attachments 1 and 2, confirm these facts. Simply put, Mr. Badal's  
17 testimony lacks factual data to contend that Qwest lost residential customers to  
18 competitors.

19 **Q. DID YOU FIND ANY ECONOMIC INFORMATION THAT THE COMMISSION**  
20 **MAY WANT TO REVIEW AS AN INDICATOR TO HELP EXPLAIN THE**  
21 **SMALL DECREASE IN QWEST'S RESIDENTIAL ACCESS LINE BASE?**

1 A. Yes. According to the New Mexico Department of Labor, unemployment has increased  
2 statewide in a one-year period from 4.9% to 5.6%. See Attachment 3 to my testimony  
3 which is a summary the county and metropolitan statistical area unemployment rates.  
4 This increase in unemployment in the state could help to explain why Qwest's residential  
5 access line base decreased. Higher unemployment generally means citizens have less  
6 income to spend. This in turn could result in a decision to disconnect from the network,  
7 even if temporarily.

8 **Q. DID AT&T OBTAIN ANY OTHER INFORMATION THAT PROVIDES**  
9 **ADDITIONAL INSIGHT INTO THE SMALL DECREASE IN THE QWEST**  
10 **RESIDENTIAL ACCESS LINE BASE?**

11 A. Yes, in discovery AT&T asked for the number of Qwest residential retail accounts that  
12 have been suspended or disconnected because payment was delinquent or not made. The  
13 question (01-018) and Qwest proprietary response are attached to my testimony as  
14 Confidential Attachment 4. The response shows that in some months nearly all or all of  
15 the decrease in residential access lines cited by Mr. Badal could have resulted from lines  
16 disconnected because the bills were not paid.

17 **Q. PLEASE COMMENT ON THE REPORT APPARENTLY PROVIDED BY THE**  
18 **E911 DATABASE VENDOR, INTRADO, TO QWEST THAT IS CITED ON**  
19 **PAGE 4 OF THE AFFIDAVIT ATTACHED TO THE TESTIMONY OF MR.**  
20 **BADAL.**

21 A. I have not seen this report, but the mention of it provokes more questions than answers in  
22 this case, especially given the trend in wholesale services. Before relying on the

1 characterization of the results of the Intrado report, the Commission should validate that  
2 the data is current and accurate. Without further investigation of this alleged report, the  
3 mere mention of it in Qwest testimony should not be used as evidence of competition.

4 **Q. SHOULD THE COMMISSION BE ASSURED THAT THE REPORTED**  
5 **NUMBER OF RESIDENTIAL TELEPHONE NUMBERS IN THE 911**  
6 **DATABASE ARE INDEED ACCURATE?**

7 A. While one would hope so, that has not been my experience. I have worked with 911 and  
8 E911 services in Colorado, and know that a major issue there revolves around  
9 inaccuracies in the database in that state, also maintained by Intrado. Accordingly, I  
0 recommend that the Commission ask for more data, and to the extent possible, audited  
1 data from the Intrado database concerning residential telephone numbers, if this  
2 information is going to be used to support a finding of Track A compliance by Qwest in  
3 New Mexico.

4 **Q. PLEASE COMMENT ON THE TESTIMONY AND AFFIDAVIT OF QWEST**  
5 **WITNESS JOHN BADAL AND HIS ASSERTIONS ABOUT CRICKET**  
6 **WIRELESS SERVICE.**

7 A. Mr. Badal's testimony and affidavit largely rely on Cricket Wireless Service to attempt to  
8 make the case for Track A residential competition for Qwest. However, the vast  
9 majority of the information he presents is anecdotal and insufficient to prove Cricket is  
0 being substituted as a replacement for Qwest's telephone exchange services for purposes  
1 of Track A.

1   **Q.     WHAT STANDARDS SHOULD THIS COMMISSION USE TO DETERMINE IF**  
2       **PCS WIRELESS SERVICES MEETS THE TRACK A REQUIREMENTS?**

3   A.     The Federal Communications Commission (FCC) describes the standards that this  
4       Commission should use to determine whether or not PCS service constitutes telephone  
5       exchange service for purposes of Track A in the *Second BellSouth Louisiana 271 Order*.<sup>5</sup>  
6       Mr. Badal's testimony references this FCC order, but in an incomplete fashion. The  
7       order at paragraph 31 states that "evidence of marketing efforts by broadband PCS  
8       providers designed to induce replacement" may be relevant to an examination of Track  
9       A compliance. However, the FCC instructs that in order to meet Track A, Qwest must :  
10           a. Show that the PCS wireless service is being used to replace wireline service,  
11           not just supplement it, and  
12           b. Provide evidence such as a study or survey showing that customers are  
13           actually subscribing to Cricket service in lieu of Qwest service.

14   **Q.     DOES QWEST PROVIDE EVIDENCE TO DEMONSTRATE A. AND B. IN**  
15       **YOUR PREVIOUS RESPONSE?**

16   A.     No. Mr. Badal's testimony contains three affidavits from consumers apparently using  
17       Cricket Wireless Service as either a supplement to or replacement for Qwest local  
18       service. Three affidavits do not constitute a study or survey in accordance with the FCC  
19       order. Three affidavits are not conclusive evidence. We cannot tell based on the  
20       information in this case if customers are using Cricket Wireless to replace Qwest  
21       residential local service.

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<sup>5</sup> Memorandum Opinion and Order, *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance Inc., for Provision of in-Region, InterLATA Services in Louisiana*, 13 FCC Rcd. 20599, 1998WL712899, paras. 31 and 32, footnotes omitted.

1 In fact, Qwest even answered AT&T data requests saying that it does not track the  
2 number of customers who disconnected Qwest service in order to replace it with Cricket  
3 Wireless Service. See discovery question and response AT&T 01-002 attached to my  
4 testimony as Attachment 5.

5 In addition, Qwest inappropriately relies solely on a statement made by Cricket's General  
6 Manager, John Clark, in the Albuquerque Journal on February 22, 2001 to estimate that  
7 Cricket has taken 7% of Qwest's residential access lines as of September 30, 2001<sup>6</sup>:

8 Clark said another Cricket bonus is that the affordable service is great for  
9 parents who are thinking of adding a second line for the kids.

10 "Except it comes with the added advantage of mom and dad being able to  
11 keep track of them," Clark said, adding that it is up to the kids to answer  
12 the phone.

13 "One thing we are noticing is over 7 percent of our customers are cutting  
14 their home phone services," Clark said.

15 The phrase "cutting their home phone services" could mean any number of things, from  
16 discontinuing voice mail or other vertical services to foregoing a second line. Qwest did  
17 not provide any studies or statistically valid information to show that customers are  
18 actually subscribing to PCS wireless service in lieu of Qwest service. Qwest merely  
19 assumes the 7 percent as a replacement for Qwest residential service without knowing  
20 whether or not it is true. The statement that 7 percent of customers are cutting home  
21 phone services could mean that customers *may be substituting* Cricket Wireless for  
22 additional lines, in addition to perhaps, *replacing* Qwest wireless services. The  
23 Commission should dismiss Qwest's unproven assumption because Qwest has failed to

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<sup>6</sup> See footnote 2.

1 provide the necessary information to determine whether or to what extent Cricket  
2 Wireless is being used to replace or supplement Qwest local residential service.

3 **Q. WHAT DOES THE FCC'S *SECOND BELLSOUTH LOUISIANA 271* ORDER**  
4 **INSTRUCT IN TERMS OF DEMONSTRATING ACTUAL CUSTOMER**  
5 **BEHAVIOR TO SHOW THAT PCS WIRELESS SERVICE IS BEING USED AS A**  
6 **REPLACEMENT FOR WIRELINE LOCAL SERVICE?**

7 A. The FCC's order, in paragraph 32, is clear that "(A)ctual customer behavior is more  
8 persuasive than price comparison studies alone because of the advantages and  
9 disadvantages associated with PCS and wireless telephone service." Thus, it is  
10 preferable to provide the results of a statistically valid consumer survey rather than a  
11 mere price comparison when examining whether wireless PCS service has become a true  
12 substitute for land line service. Except as noted below, Qwest has failed to provide such  
13 a survey here.

4 **Q. ARE THERE ADVANTAGES AND DISADVANTAGES TO USING WIRELESS**  
5 **SERVICES?**

6 A. Yes. There are differences in wireless services and Qwest's wireline local service.  
7 Accordingly, they are not 100% substitutable. While wireless service has some  
8 preferable aspects for some users of just voice communications, namely portability and  
9 convenience, wireless has some drawbacks. One drawback is that wireless typically has  
10 a lower transmission quality. Subsequently, calls can be subject to noise or being cut-off.  
11 Second, wireless does not typically support data transmission or Internet usage.

1   **Q.     HAS QWEST CONDUCTED ANY STUDIES CONCERNING CUSTOMERS'**  
2       **EXPECTED BUYING BEHAVIORS FOR WIRELESS SERVICE?**

3   A.    Yes. Qwest conducted a proprietary survey, attached to my testimony as Confidential  
4       Attachment 6, the survey shows that [**PROPRIETARY: XXXXXXXXXXXXXXXXXXXX**  
5       **XX**  
6       **XX**  
7       **XXXXXXXXXXXXXXXXXXXXXXXXXXXX.**]

8   **Q.     PLEASE SUMMARIZE YOUR TESTIMONY AND PROVIDE YOUR**  
9       **RECOMMENDATION TO THE COMMISSION.**

10 A.    As I have detailed throughout my testimony, Qwest provided additional anecdotal  
11 information in its testimony, but this additional information is not evidence of residential  
12 competition. Therefore, the additional information is insufficient to modify the findings  
13 by the Facilitator in the multi-state 271 proceeding. Qwest has still not proven the  
14 existence of residential competition sufficient to meet the Track A. Nevertheless, Qwest  
15 has indeed shown that residential competition has sharply declined in five months in New  
16 Mexico.

17       Accordingly, I recommend the Commission uphold the findings in the Facilitator's  
18 Report.

19 **Q.     DOES THIS CONCLUDE YOUR TESTIMONY?**

20 A.    Yes.



## Attachment 1

New Mexico  
Utility Case No. 3269  
AT&T 01-020

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 020

Has Qwest researched new housing starts or permits for any other New Mexico locality or county other than those provided in the Affidavit of John Badal dated October 5, 2001? If so, please provide all back-up information, documentation, and evidence supporting your answer.

### RESPONSE:

Qwest objects to this Request because it violates the attorney-client privilege and the attorney work-product doctrine. Qwest also objects to this Request because it seeks information that is highly confidential, proprietary, competitively sensitive, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the objection, Qwest states: No.

Respondent: Michael Horcasitas, Staff Advocate, Policy & Law

## Attachment 2

New Mexico  
Utility Case No. 3269  
AT&T 01-023

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 023

Has Qwest reviewed or researched unemployment figures for the state of New Mexico in connection with the preparation of its case here? If so, please provide all back-up information, documentation, studies, and evidence support your answer.

### RESPONSE:

Qwest objects to this Request because it violates the attorney-client privilege and the attorney work-product doctrine. Qwest also objects to this Request because it seeks information that is highly confidential, proprietary, competitively sensitive, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the objection, Qwest states: No.

Respondent: Michael Horcasitas, Staff Advocate, Policy & Law

## New Mexico Department of Labor County Unemployment Rate Rankings<sup>1</sup>

AREAS	OCT 2000 RATE	SEPT 2001 RATE
<i>Statewide</i> <sup>2</sup>	<b>4.9%</b>	<b>5.6%</b>
Mora	15.7%	11.4%
Luna	15.3%	14.5%
Taos	11.3%	10.8%
Chaves	9.0%	7.8%
<i>Guadalupe</i> <sup>2</sup>	<b>8.3%</b>	<b>8.6%</b>
<i>Hidalgo</i> <sup>3</sup>	<b>7.7%</b>	<b>8.7%</b>
Catron	7.5%	5.7%
McKinley	7.4%	6.7%
Cibola	7.2%	6.8%
San Juan	7.2%	6.9%
Eddy	6.9%	6.3%
<i>Rio Arriba</i> <sup>2</sup>	<b>6.6%</b>	<b>7.2%</b>
<i>Grant</i> <sup>2</sup>	<b>6.3%</b>	<b>9.0%</b>
<i>Otero</i> <sup>2</sup>	<b>6.2%</b>	<b>6.5%</b>
<i>San Miguel</i> <sup>2</sup>	<b>6.2%</b>	<b>7.8%</b>
<i>Las Cruces MSA</i> <sup>2,3</sup>	<b>6.0%</b>	<b>7.0%</b>
<i>Socorro</i> <sup>2</sup>	<b>5.8%</b>	<b>6.9%</b>
Torrance	5.6%	5.4%
Colfax	5.5%	5.5%
Lincoln	5.2%	4.8%
Lea	4.5%	4.0%
<i>Quay</i> <sup>2</sup>	<b>4.5%</b>	<b>5.5%</b>
Curry	4.1%	4.0%
<i>Harding</i> <sup>2</sup>	<b>4.0%</b>	<b>4.3%</b>
<i>DeBaca</i> <sup>2</sup>	<b>3.7%</b>	<b>5.7%</b>
<i>Albuquerque MSA</i> <sup>2,4</sup>	<b>3.4%</b>	<b>4.9%</b>
Roosevelt	3.4%	3.3%
Sierra	3.3%	5.6%
<i>Santa Fe MSA</i> <sup>2,5</sup>	<b>2.7%</b>	<b>3.0%</b>
Union	2.7%	2.3%

<sup>1</sup> Source: [http://www.state.nm.us/dol/dol\\_crank.html](http://www.state.nm.us/dol/dol_crank.html)

<sup>2</sup> *Area Unemployment has increased*

<sup>3</sup> Metropolitan Statistical Area – Doña Ana County

<sup>4</sup> Metropolitan Statistical Area – Bernalillo, Sandoval & Valencia

<sup>5</sup> Metropolitan Statistical Area – Santa Fe and Los Alamos Counties

#### Attachment 4

New Mexico  
Utility Case No. 3269  
AT&T 01-018

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 018

For each month from December, 2000, to the present, how many Qwest residential local access lines in New Mexico were suspended and/or disconnected for nonpayment?

#### RESPONSE:

Qwest objects to this Request to the extent it seeks confidential customer information, the disclosure of which would violate Qwest's statutory or other legal obligations and/or customers' constitutional, statutory, or other legal privacy rights. Qwest also objects to this Request because it seeks information that is highly confidential, proprietary, and competitively sensitive. Subject to and without waiving the objection, Qwest states:

See Confidential Attachment AT&T 01-018, which displays the number of residential accounts, by month, from December 2000 through October 2001 for which service was suspended for non-payment, as well as the number of accounts that were subsequently disconnected for non-payment. Note that the accounts disconnected for non-payment were all initially suspended for non-payment, so the numbers shown on the line entitled "# disconnections for non-pay issued" are a subset of the numbers shown on the line entitled "# suspensions of dialtone for non-pay issued."

Respondent: David Teitzel, Senior Staff Advocate, Policy & Law

## Attachment 5

New Mexico  
Utility Case No. 3269  
AT&T 01-002

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 002

Please provide a monthly breakdown of the number of a) residential and b) business customers disconnecting Qwest local exchange service in order to replace their landline local exchange service with the wireless service offered by Cricket.

### RESPONSE:

a) Qwest objects to this Request because it is not reasonably limited in time or scope, and seeks information that is highly confidential, proprietary, and competitively sensitive. Subject to and without waiving the objection, Qwest states:

Unknown. Qwest does not specifically track the number of customers who disconnected service in order to replace their landline local exchange service with the wireless service offered by Cricket.

Qwest notes further that counting only those customers who have actually disconnected their Qwest landline local exchange service seriously underestimates the extent to which New Mexico customers are substituting Cricket wireless service for Qwest landline service. Qwest's services would not be disconnected where a residential customer has purchased Cricket's services in lieu of installing a second telephone line from Qwest, for example, or where a customer uses Cricket from the outset and never establishes landline service at all.

b) Qwest objects to this Request because it is not reasonably limited in time or scope, and seeks information that is highly confidential, proprietary, and competitively sensitive. Qwest also objects to this Request because it seeks information about business customers and the business market that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence as a matter of law. The Commission has limited the scope of this evidentiary proceeding to "(i) examining the information contained in the Affidavit of John W. Badal that purports to 'document certain updated and additional information . . . regarding the extent to which local exchange service is provided to residential customers in New Mexico by carriers competing with Qwest', and (ii) examining Qwest's evidence regarding the nature and extent of the provision of residential local exchange service through resale." See Procedural Order Regarding Track A at 7 quoting Affidavit of John W. Badal at 1. Subject to and without waiving the objection, Qwest states:

Unknown. Qwest does not specifically track the number of customers who

## Attachment 5

disconnected service in order to replace their landline local exchange service with the wireless service offered by Cricket. Qwest notes further that counting only those customers who have actually disconnected their Qwest landline local exchange service seriously underestimates the extent to which New Mexico customers are substituting Cricket wireless service for Qwest landline service. Qwest's services would not be disconnected where a residential customer has purchased Cricket's services in lieu of installing a second telephone line from Qwest, for example, or where a customer uses Cricket from the outset and never establishes landline service at all.

Respondent: Michael Horcasitas, Staff Advocate, Policy & Law

Case No.: 3269

AT & T  
Exhibit 1A

Deemed Confidential  
Subject to protective order  
In case no. 3269

ORIGINAL  
Sealed and filed  
Not to be checked out!!!